EXTRACTS FROM

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1277.

THE CENTRAL TRUST COMPANY OF NEW YORK, APPELLANT,

vs.

THE GRANT LOCOMOTIVE WORKS AND THE AMERICAN LOAN & TRUST COMPANY.

No. 1278.

THE DAYTON, FORT WAYNE AND CHICAGO RAILROAD COMPANY, APPELLANT,

vs.

THE GRANT LOCOMOTIVE WORKS AND THE AMERICAN LOAN & TRUST COMPANY.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED OCTOBER 2, 1889.

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Circuit Court of the United States for the Southern District of Ohio, Western Division.

THE CENTRAL TRUST COMPANY OF NEW YORK, a Corporation, as Trustee under a Certain Indenture of Trust and Mortgage made by The Toledo, Delphos and Burlington Railroad Company, dated May 16, 1881, Complainant,

against

THE TOLEDO, DELPHOS AND BURLINGTON RAILROAD Company, The Toledo, Cincinnati and St. Louis Railroad Company, Granville D. Braman, Defendants.

} In Equity.

To the judges of the circuit court of the United States for the southern district of Ohio:

The Central Trust Company of New York, a corporation organized and existing under the laws of the State of New York and a citizen of that State, brings this its bill of complaint against The Toledo, Delphos and Burlington Railroad Co., a corporation organized under the laws of the States of Ohio and Indiana and a citizen of Ohio; The Toledo, Cincinnati and St. Louis Railroad Co., a corporation created by and existing under the laws of the States of Ohio, Indiana, and Illinois and a citizen of the State of Ohio, and Grenville D. Braman, a citizen of Massachusetts; and thereupon your orator complains and says:

I. That heretofore and prior to the 16th day of May, 1881, the Dayton and Southeastern Railroad Co., a corporation created by and existing under the laws of the State of Ohio, and the Toledo, Delphos and Burlington Railroad Company, a corporation created by and existing under the laws of the States of Ohio and Indiana, duly and lawfully became and were consolidated in one corporation under the name of the Toledo, Delphos and Burlington R. R. Company, and said consolidated corporation was created by and thereafter continued to exist under the laws of the said States of Ohio and Indiana.

That on the 16th day of May, 1881, the said last-mentioned corporation was the owner of or about to construct and equip the lines of railroad and appurtenances hereinafter described from a point in the city of Dayton, Ohio, through the counties of Montgomery, Greene, Fayette, Ross, Vinton, and Jackson, and thence in a branch line, through the counties of Jackson, Gallia, and Lawrence, to a connection with the Ironton and Huntington railroad at or near the city of Ironton, in Lawrence county, Ohio, and by its president and secretary, under its corporate seal and in pursuance of a resolution to that end duly adopted on the 12th day of April, 1881, by the board of directors of said last-mentioned corporation, which resolution was thereafter and prior to the execution of the bonds

and indenture of mortgage hereinafter mentioned duly ratified by the vote and consent of the holders of a majority of the stock of said corporation at a meeting of stockholders convened and held according to law, did execute its two thousand two hundred and fifty bonds, for the sum of one thousand dollars each, dated the 16th day of May, 1881, payable in gold coin of the United States on the first day of April, 1921, said bonds bearing interest at the rate of six per cent. per annum, payable semi-annually on the first day of April and October in each year, in gold coin, at the city of New York or London, England, each of said bonds having interest warrants or coupons for thirty dollars each thereto attached for payment of interest as aforesaid; and said Toledo, Delphos and Burlington R. R. Co. issued and sold, or caused to be sold, two thousand two hundred and fifty of said bonds, with said interest warrants or coupons attached, all of which said bonds were before the same were issued duly certified by your orator, and said bonds are now in the hands of divers and sundry persons as holders thereof, and with the proceeds of sale of said bonds said railroad Co. did locate, construct, and equip its said line of railroad and complete and improve the same.

II. Your orator further shows that in order to secure the payment of the principal and interest of said bonds as the same should mature the said Toledo, Delphos and Burlington Railroad Company, formed by consolidation as aforesaid, did, on or about said 16th day of May, 1881, in pursuance of the further provision of said resolution, execute and deliver to your orator, a corporation created by and existing under the laws of the State of New York and a citizen of said last-mentioned State, a certain deed or indenture of trust and mortgage, which said deed or indenture of trust and mortgage was duly recorded in the several counties in and through which said railway was situated and extended, to wit, in the county of Montgomery on May 26, 1881; in county of Greene on May 29, 1881; in the counties of Fayette and Ross on May 28, 1881; in the counties of Vinton and Jackson on May 30, 1881; in the county of Gallia on May 31, 1881, and in the county of Lawrence on June 1, 1881; and thereby it did grant, bargain, sell, convey, and confirm unto your orator and its successor or successors in trust all and singular its line of railroad as the same was or should thereafter be constructed between the crossing at Third St., in Dayton, Ohio, being the western terminus of said division, and thence with the line of said road through the counties of Montgomery, Greene, Fayette, Ross, Vinton, and Jackson, and thence on its branch line through the counties of Jackson, Gallia, and Lawrence to a connection with the Ironton and Huntington railroad at or near the city of Ironton, in Lawrence county, Ohio, being about one hundred and eighty miles in length, together with all and singular the rights of way, road-bed, made or to be made, its track, laid or to be laid, between the terminal points aforesaid, together with all the stations, depot grounds, rails, fences, bridges, sidings, engine-houses, engines, cars, machine shops, buildings, erections in any way then appertaining or which should thereafter appertain unto said describe

line of railroad between said points, together with all machinery, supplies, tools, and fixtures then or which should be at any time thereafter held, owned, or acquired by the said Toledo, Delphos and Burlington Railroad Co. for use in connection with its line of railroad aforesaid between said points, and all its depot grounds, yards, sidings, turnouts, sheds, machine shops, leaseholds rights then or which should be thereafter owned by said last-mentioned railroad Co. in connection with its line of railroad aforesaid between said points, together with all and singular the powers and franchises thereto belonging, and the tolls, income, and revenue to be levied or derived therefrom, and conveying no other property; to have and to hold the said granted premises unto your orator and its successor forever, in trust, nevertheless, and for the uses and purposes in said indenture expressed, which will more fully and at large appear by reference to the original thereof, and your orator craves leave to produce and refer to the said original upon the hearing of this cause.

III. Your orator further shows that in and by said mortgage or deed of trust to your orator it was, among other things, provided, and the said Toledo, Delphos and Burlington Railroad Co. did therein covenant and agree, that if the interest due on any of said bonds should not be paid by the said last-mentioned railroad company when the same should become due, and should remain in arrears for six months after it had been actually demanded at the place where the same was payable, as specified in said coupons, or in case the principal of said bonds or any of them should not be paid at their maturity, then it should be lawful for your orator or its successor to forthwith demand, enter, take, and maintain possession of all and singular the railroad, premises, and franchises thereby conveyed, and as the attorney-in-fact or agent of said last-mentioned railroad Co., by itself and agents or substitutes, duly constituted, have, use, manage, operate, and enjoy the same and each and every part thereof to as full an extent as the said railroad Co. might lawfully do, and should make from time to time all needful repairs, alterations, and additions thereto, and receive all the tolls, income, and revenue thereof, and after deducting the expense of such use, operation, reasonable repairs, alterations, and additions, and the costs and charges of taking such possession, and a fair compensation for the services of such trustee for such taking possession and management while in possession, your orator or its successor for the time being should apply the remaining income and revenue arising from the use of said mortgaged property and coming to its hand to the payment of interest in default and maturing from time to time, satisfying the said coupons in the order of their several maturities, and thereafter apply the residue upon the principal of said then outstanding bonds.

And your orator further shows that it was also provided in said mortgage or deed of trust that if a six months' default should occur either in the payment of principal or interest of any of the bonds thereby secured after such actual demand as aforesaid, then it should be lawful for your orator or said trustee for the time being, with or without entry as aforesaid, to cause all and singular the said prem-

ises, railway, and appurtenances, equipment, and franchises thereby conveyed to be sold as an entirety at public auction to the highest and best bidder, at the city of Dayton, Ohio, after giving at least sixty days' notice of the time, place, and terms of sale by advertisement in a newspaper of general circulation in the city of Dayton and like advertisement in a newspaper of general circulation in the city of New York, and on such sale your orator or the trustee for the time being should make, execute, acknowledge, and deliver unto the purchaser or purchasers thereof a good and sufficient deed in fee simple conveying the said railroad property and franchises so sold, which conveyance should be a perpetual bar in law and equity against said last-mentioned railroad company, its successor and assigns, and all persons claiming or to claim under them, of all right, title, interest, or claim of, in, or to the said premises and franchises or any part thereof, and that your orator, after deducting from the proceeds of sale *and* costs and expenses thereof and a reasonable compensation to said trustee and its attorneys and agents for services in connection therewith, should apply so much of the proceeds as might be necessary to the ratable payment of principal and then the accrued interest of all the said bonds, whether the said principal should then be due or not; and if any proceeds of such sale should remain in its hands after the full payment of the principal and accrued interest of all said bonds, then it should render and pay over the same to said last-mentioned railroad company or its successors or assigns.

And your orator further shows that it was provided in said mortgage or deed of trust, and the said last-mentioned railroad company did therein and thereby expressly covenant and agree, that it would, in case of default in the payment by it either of the principal or interest of any of its bonds thereby secured, forthwith, upon demand of your orator or of the trustee for the time being, surrender the full and peaceable possession of all and singular the premises thereby conveyed or intended to be, including all the real and personal property by it acquired subsequent to the date of the said mortgage for use in connection with the said line of railroad between said points, and would also surrender all books of account, records, and papers used by it in and about the operation thereof.

IV. Your orator further shows that the said last-mentioned railroad company, the Toledo, Delphos and Burlington Railroad Co., has failed to pay the interest on said bonds and has made default therein to all the holders thereof, and said company has failed to pay the interest warrants or coupons due thereon October 1, 1882, April 1, 1883, and October 1, 1883, and the same have ever since remained unpaid, although payment of the same was duly demanded, and that said default has continued and said interest has remained in arrears for more than 6 months, and many of the holders of said bonds to whom such default has been made have required your orator to institute the necessary legal proceedings to foreclose said mortgage and sell the said mortgaged railway and property of the Toledo, Delphos and Burlington Railroad Co. (now commonly known as the Southeastern Division of the Toledo, Cincinnati and St. Louis

Railroad Co.), and for the appointment of a receiver of said property, and to take such other and further steps necessary and proper for the protection of the right- of the holders of said bonds as your orator may be authorized to take by said deed of trust or mortgage.

And your orator deems it for the interest of the parties concerned, particularly of the holders of the said first-mortgage bonds and coupons, to institute judicial proceedings for the foreclosure of said mortgage or deed of trust and for the sale of all the premises and property thereby conveyed and for the appointment of a receiver to take possession of, operate, and control the said railroad and its branches and to take an inventory of all the personal or movable property included in said mortgage, and to keep an account of the earnings and of the expenses incurred in operating the said railway and branches.

V. Your orator further shows that the said Toledo, Delphos and Burlington R. R. Co.—proper corporate action for that purpose having first been had—did, on the said 16th day of May, 1881, execute and deliver to your orator as trustee a certain other indenture of trust and mortgage, bearing date on that day, whereby it granted, bargained, sold, and conveyed unto your orator as trustee all the railroad, property, rights, franchises, goods, and chattels described or mentioned in the mortgage first set forth in this bill and the net income thereof to secure the payment at maturity of the principal of two thousand seven hundred and fifty bonds of said Toledo, Delphos and Burlington Railroad Company, known as income bonds, 1,750 thereof for $1,000 each, numbered consecutively from 1 to 1750, both inclusive, and 1,000 thereof for $500 each, numbered from 1 to 1000 each, both inclusive, payable on the 1st day of April, 1921, and of such interest upon the said bonds as might become due thereon according to terms of said bonds and of said indenture.

That it was by said last-mentioned indenture expressly agreed that interest upon said bonds was not to be due or payable except out of net earnings of said railroad Co. applicable to such purpose, and when the amount should have been ascertained and declared by the board of directors of said last-mentioned company, whose duty it was by the terms of said indenture in each year during the currency of said bonds, beginning with the year 1882, in the month of January, to declare what amount, if any, of net earnings had been made during the preceding fiscal year which was justly applicable to the payment of interest on said income bonds, and such ascertainment of net earnings was to be made by deducting from gross income all operating expenses, including rebates, taxes, insursurance, rents, interest on floating and funded debt and borrowed money, and the payments made on the principal thereof, liabilities for interest on the existing first-mortgage bonds of the said railroad company, and other payments, as by reference to said income mortgage will more fully and at large appear.

That the said last-mentioned mortgage was duly recorded in each of the counties in which the said first mortgage was recorded, so as to constitute a second lien or mortgage upon the railroad and property thereby conveyed.

Your orator further shows, on information and belief, that two thousand seven hundred and fifty of said bonds so secured as aforesaid by said second or income mortgage have been issued and disposed of by said Toledo, Delphos and Burlington Railroad Co. and are now in the hands of divers persons as owners thereof who are unknown to your orator.

Your orator further shows that no interest has become or is now due or payable on said last-mentioned bonds under the terms thereof and of said second mortgage owing to insufficiency of earnings, but that the principal of said bonds issued as aforesaid is a a lien upon said property, rights, franchises, etc., of said Toledo, Delphos and Burlington Railroad Co. described in said mortgage next after the first mortgage hereinbefore described.

VI. Your orator further shows that *on* or about the month of February, 1882, a certain corporation known as the Toledo, Cincinnati and St. Louis Railroad Company (of Indiana and Illinois), claiming to be a corporation of the said States of Indiana and Illinois by virtue of certain consolidations, and a certain other corporation known as the Frankfort, St. Louis and Toledo Railroad Company, claiming to be a corporation of the State of Indiana, and the defendant, The Toledo, Delphos and Burlington Railroad Company, entered into an agreement with each other whereby said several corporations undertook, under the name of the Toledo, Cincinnati, and St. L. Railroad Company, to consolidate and unite all the lines of railroad of the Toledo, Delphos and Burlington Railroad Co. (including said Southeastern Division) with the lines of railroad of the Toledo, Cincinnati and St. Louis Railroad Company of Indiana and Illinois and of the Frankfort, St. Louis and Toledo Railroad Co. at their respective points of connection, and to consolidate the capital stock of the said respective companies under the laws of Ohio, Indiana, and Illinois, and to transfer and vest in said consolidated company, under the name of the Toledo, Cincinnati and St. Louis Railroad Company, all the powers, privileges, immunities, and property, real, personal, and mixed, belonging to the respective companies parties to said agreement of consolidation.

And your orator further shows that the said company formed by said last-mentioned consolidation and known as the Toledo, Cincinnati and St. Louis Railroad Co. had or claimed to have the power to and did construct or maintain and operate a railroad from the city of Toledo, in the State of Ohio, to the town of Delphos, in said State, and thence through the States of Indiana and Illinois into the city of East St. Louis, in Illinois, and from said town of Delphos to Dayton, Ohio, and also the railroad described in the mortgages hereinbefore set forth, and the railroad formerly of the Iron Railroad Co., in Lawrence county, Ohio, and also a branch extending from a point near Shakertown, Ohio, to a point at or near Lebanon, Ohio, to wit, at Dodds, Warren county, O., and a branch from Mercer to Shanesville, Ohio, and that on or about the 5th day of May, 1883, the said Toledo, Cincinnati and St. Louis Railroad Co. entered into a further agreement of consolidation with two corporations organized under the laws of the State of Ohio, known respectively as the Cincinnati

Northern Railway Co. and the Spring Grove, Avondale and Cincinnati Railway Company, the first-named company owning or being engaged in constructing a railroad from Cincinnati, Ohio, to Waynesville, Warren county, Ohio, and the second-named company being the owner of a line of railroad from a point in Cincinnati to Spring Grove cemetery, Hamilton Co., Ohio, which had theretofore been leased to said Cincinnati Northern Railway Company, whereby said three corporations undertook to consolidate and unite all their said lines of railroad, and to consolidate the capital stock of the said respective companies under the laws of Ohio, and to transfer to and vest in the said new consolidated company, under the name of The Toledo, Cincinnati and St. Louis Railroad Co. (the defendant in this bill of complaint), all the powers, privileges, immunities, and property, real, personal, and mixed, belonging to the respective companies parties to said agreement of consolidation, said consolidated company expressly recognizing and affirming the said several mortgages hereinbefore mentioned and the said bonds and coupons secured thereby and assuming payment of the same, the capital stock of said new consolidated company to be thirty millions of dollars, of which eleven millions *was* to be preferred stock and the balance thereof to be common stock.

Your orator further shows that it is informed and believes that said several agreements of consolidation were acted upon by said companies from said respective dates, although your orator says that it was not a party to said consolidations or either of them, nor has it assented thereto or acquiesced therein.

VII. Your orator further shows that it is claimed by said defendant, The Toledo, Cincinnati and St. Louis Railroad Company, that it owns, by virtue of said last-mentioned consolidation, all the aforesaid property, rights, franchises, and assets of the said Toledo, Delphos and Burlington Railroad Co. mentioned and described in the two several mortgages aforesaid, and that the same have become subject to the debts and liabilities of said consolidated company; but your orator says that whatever rights, if any, in or to the same the said Toledo, Cincinnati and St. Louis Railroad Co. acquired by virtue of said consolidation the same are subject and subordinate to the several mortgages hereinbefore stated, and that the railroad, property, franchises, rights, and assets embraced in and covered by said mortgages are not nor were they at the time of the said last-mentioned consolidation sufficient to pay the amount of all the bonds and interest secured thereon by the several mortgages hereinbefore mentioned.

Your orator further shows that several of the constituent companies forming the said consolidated corporation known as the Toledo, Cincinnati and St. Louis R. R. Co. heretofore executed various mortgages on the line of railway and property owned by them respectively to your orator as trustee, which said mortgages in the aggregate cover, as your orator is informed and believes, substantially all of the property of said defendant, The Toledo, Cincinnati and St. Louis Railroad Company, and that default has been made

in the payment of interest on all of the bonds secured thereby except income bonds.

And that said mortgages are as follows:

1. First mortgage Toledo, Delphos and Burlington Railroad Company to Central Trust Company, trustee, dated January 17, 1880, to secure $1,250,000 of bonds and covering the main line of said railroad from Toledo to Kokomo, Indiana.

2. First mortgage (terminal trust) Toledo, Delphos and Burlington Railroad Co. to Central Trust Co., trustee, date June 21, 1880, to secure $250,000 of bonds and covering property in Toledo.

3. First mortgage Toledo, Delphos and Burlington Railroad Co. to Central Trust Co., trustee, dated July 1, 1880, to secure $1,000,000 of bonds and covering Dayton Division from Delphos to Dayton.

4. First mortgage Toledo, Delphos and Burlington Railroad Co. to Central Trust Co., trustee, dated May 16, 1881, to secure $250,000 of bonds and covering Cincinnati Division from Shakertown to Lebanon, Ohio.

5. First mortgage Toledo, Cincinnati and St. Louis Railroad Company to Central Trust Company and Thomas A. Hendricks, trustees, dated July 23, 1881, to secure $3,000,000 of bonds, covering line from Kokomo to East St. Louis.

6. First mortgage Iron Railroad Company to Central Trust Company, trustee, dated August 1, 1881, to secure $500,000 of bonds and covering lines in Lawrence county, Ohio.

7. First mortgage Cincinnati Northern Railway Co. to Central Trust Company, trustee, dated October 1, 1880, to secure $1,000,000 of bonds and covering line from Waynesville to Cincinnati.

8. First mortgage Spring Grove, Avondale and Cincinnati Railway Company to Central Trust Co., trustee, dated May 25, 1881, to secure $1,000,000 of bonds and covering line from Cincinnati to Spring Grove cemetery.

9. The mortgage particularly described in the second paragraph of this bill.

Your orator further shows that there are also other mortgages held by your orator as trustee and made by said several constituent railroad companies other than said Spring Grove, Avondale and Cincinnati Railway Co. to secure income bonds which are junior to the several first mortgages hereinbefore recited and which are liens upon the aforesaid divisions, respectively, except that embraced in and covered by said terminal trust mortgage.

That your orator has commenced or is about to commence in courts of competent jurisdiction proper legal proceedings or suits in equity to foreclose the said several mortgage liens and to procure the appointment of receiver of each of said separate lines covered by said respective mortgages, and that your orator is advised and believes that it will be for the interest of all the parties concerned, and especially of the several holders of the bonds and coupons secured by said several and respective mortgages, that the accounts and affairs of each of the said several lines or divisions should be kept separate from each of the other divisions of said consolidated company, and that some one competent person should be appointed

as receiver in each of the several suits or proceedings so as aforesaid commenced or to be commenced by your orator.

Your orator further says that, as it is informed and believes, the net earnings of some or one of the several divisions of the said Toledo, Cincinnati and St. Louis Railroad Company are sufficient, if kept separate, to pay the interest warrants or coupons of the first-mortgage bonds constituting a lien upon sueh separate division or divisions, but that the said Toledo, Cincinnati and St. Louis Railroad Company claims that the earnings of all of the divisions of the said road should go into the common fund of said consolidated company, but that no account should be kept of the separate earnings and expenses of each division, and the earnings and income of all of said divisions are now and ever since said consolidation have been received and taken by said consolidated company, the said Toledo, Cincinnati and St. Louis Railroad Co., which is hopelessly insolvent, and appropriated to pay the expenses of said consolidated company and wholly diverted from the payment of the interest or any part thereof due upon the said bonds secured by the several mortgages hereinbefore described and referred to.

And your orator further says that unless a separate account of the earnings and expenses of each of said divisions be carefully kept and preserved it will be impossible to ascertain whether any interest shall have become due payable upon the income bonds hereinbefore mentioned or described.

Wherefore, and forasmuch as your orator is without remedy at law, your orator brings this its bill of complaint in behalf of all the holders of bonds and coupons secured by said mortgage first herein mentioned, and prays that Granville D. Braman, who claims some interest, and the said Toledo, Delphos and Burlington Railroad Co. may be made defendants hereto, and that said consolidated company, the Toledo, Cincinnati and St. Louis Railroad Co., may be made to answer as to its interest; that process of subpœna may issue against each of them, and that they be required to make answer respectively to all and singular the allegations and charges herein contained; that the said mortgaged property be separately sold at a judicial sale, free of the claims of all parties hereto, upon such terms and conditions as this honorable court may deem most to the interest of the holders of said first-mortgage bonds and coupons, and that out of the proceeds of said sale the amount of bonds and interest secured by said first-mortgage or deed of trust to your orator may be paid to your orator for the holders thereof respectively, and that the balance, if any, of said proceeds of sale may be paid to your orator as trustee for the holders of said bonds and coupons secured by said second mortgage of said Southeastern Division in order of priority, and that meanwhile and until such sale a receiver may be appointed of all and singular the premises and property aforesaid embraced within the said mortgage or deed of trust hereinbefore first set forth, and that he may be authorized and empowered to maintain and operate said railroad of said Southeastern Division, and to exercise all the powers usually granted to receivers, and to receive and to collect all the rents and other income

from any of said mortgaged property, and to preserve the same and all parts of said mortgaged premises and property from waste and loss, and to make such payments and carry out and perform such contracts and agreements as may be to the interest of said several parties interested in said railroad, and for such other and further relief as to the court shall seem to be just and according to equity and good conscience.

BUTLER, STILLMAN & HUBBARD,
HOADLEY, JOHNSON & COLSTON,
Solicitors for Central Trust Company of New York.

UNITED STATES OF AMERICA.

SOUTHERN DISTRICT OF NEW YORK, } ss:
State of New York, City and County of New York, }

Henry F. Spaulding, being duly sworn, says that he is the president of The Central Trust Company of New York, the complainant in the above bill; that the said bill is true of his own knowledge except as to those matters which are therein stated to be upon information and belief, and as to those matters he believes it to be true.

H. F. SPAULDING.

Sworn to before me this 13th day of October, 1883.
EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York. [SEAL.]

(Record, p. 23 to p. 26, incl.)

And afterwards, to wit, on the 25th day of October, A. D. 1883, an entry was made upon the journal of said court clothed in the words and figures following, to wit:

Journal V, p. 172.

This cause coming on to be heard upon the bill of complaint of the said Central Trust Co. of New York upon its motion for the appointment of a receiver of all and singular the railroad and premises and assets, real and personal, of the said The Tolédo, Delphos and Burlington Railroad Co. in said bill of complaint described, and the said Toledo, Delphos and Burlington Railroad Co. and the said Toledo, Cincinnati and St. Louis Railroad Company appearing and consenting thereto, by Henry D. Hyde, Esq., the attorney of the said respective railroad companies, and the said Grenville D. Braman appearing and consenting thereto, by his attorney, Hon. Jno. A. McMahan, upon consideration whereof it is now ordered, adjudged, and decreed by the Hon. John Baxter, circuit judge, that William J. Craig be, and he hereby is, appointed receiver of all and singular the premises, railroad, and property, money and assets of the said The Toledo, Delphos and Burlington Railroad Co. described in said

bill of complaint, upon his giving bond, with security, to be approved by the Hon. John Baxter, circuit judge, or by the Hon. George R. Sage, sitting in the circuit court in said district, in the penal sum of ten thousand dollars, conditioned for the faithful performance of his duties as such receiver and for obeying all the lawful orders of the court herein, and that, as such receiver, he is hereby ordered and directed to take possession of, maintain, and operate the said railroad, premises, and property described in said bill of complaint, being all and singular the line of railroad of the said Toledo, Delphos and Burlington Railroad Co. as the same was constructed on the 16th day of May, 1881, or since then has been constructed between the crossing at Third street, in the city of Dayton, Ohio, being the western terminus of said division, and thence with the line of said road through the counties of Montgomery, Greene, Fayette, Ross, Vinton, and Jackson, and thence on its branch line through the counties of Jackson, Gallia, and Lawrence to a connection with the Ironton and Huntington railroad at or near the city of Ironton, in Lawrence county, Ohio, being about one hundred and eighty miles in length, together with all and singular the right of way and road-bed, then made or which since then has been made, and all its tracks, then laid or which since then have been laid, between the terminal points aforesaid, together with all the stations, depot grounds, rails, fences, bridges, sidings, engine-houses, engines, cars, machine shops, buildings, erections in any way then or since then appertaining unto said described line of railroad between said points, together with all machinery, supplies, tools, and fixtures then or since then held, owned, or acquired by said Toledo, Delphos and Burlington Railroad Co. for use in connection with its line of railroad aforesaid between said points, and all its depot grounds, yards, sidings, turnouts, sheds, machine shops, leasehold rights then or since then owned by said last-mentioned railroad Co. in connection with its said line of railroad between said points, together with all and singular the powers and franchises thereto belonging, and the tolls, income, and revenue to be levied or derived therefrom, as fully described in said bill of complaint, reference to which, for greater certainty, is now had and made.

And said receiver is hereby clothed with all the authority and rights usually given to receivers by courts of equity to take charge of, care for, and operate said railroad, premises, and property; to make reports of his acts and doings to this court at least every two months or oftener if required by the court; to collect and receive the tolls, incomes, issues, rents, and profits of said premises and property, and out of the same to make such repairs as may be necessary to preserve and keep the same in a safe and proper condition; and said receiver is hereby authorized to operate said railroad in connection with any other or others of the constituent roads of the said Toledo, Cincinnati and St. Louis Railroad Co. of which he may be appointed receiver; but he is hereby directed to keep the accounts of the earnings, income, issues, rents, profits, and expenditures of the said Toledo, Delphos and Burlington Railroad Co.

separates from the earnings, issues, rents, profits, income, and expenditures of any of the other of the constituent roads of the said Toledo, Cincinnati and St. Louis Railroad Co.

And the said defendants, the said Toledo, Delphos and Burlington Railroad Co. and the said Toledo, Cincinnati and St. Louis Railroad Co., are hereby ordered and directed to deliver to the said William J. Craig, receiver, possession and control of all the property, rights, franchises, assets, and privileges of every kind above described; and it is further ordered that said receiver make and file in this court a true inventory of all the cars, engines, rolling stock, material, or supplies above described, as well as of all other personal property coming to his possession by virtue of this order; and said receiver is further ordered to keep the accounts of all through freight and passenger business over said constituent roads, so that the receipts therefrom may be duly apportioned between the same as the court may hereafter direct.

(Record, p. 27.)

And afterwards, to wit, on the 27th day of October, A. D. 1883, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal V, p. 180.

This day came the said petitioners, The American Loan and Trust Co. and The Grant Locomotive Works, by Bluford Wilson, their solicitor, and on motion to the court it is ordered that the said petitioners have leave to intervene in this cause and file their petition herein.

(Record, p. 28 to p. 33, incl.)

And afterwards, to wit, on the 27th day of October, A. D. 1883, the following intervening petition was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Intervening Petition.

UNITED STATES OF AMERICA, *Southern District of Ohio*, } *ss:*

In the United States Circuit Court for the Southern District of Ohio.

THE CENTRAL TRUST CO. OF NEW YORK, a Corporation, *against* GEORGE D. BRAMAN and THE TOLEDO, CINCINNATI AND ST. LOUIS RAILROAD COMPANY *et al.* } In Equity.

The intervening petition of the American Loan and Trust Company and the Grant Locomotive Works.

To the honorable the judges of said court:

Respectfully show unto your honors the American Loan and

Trust Company, a corporation established under the laws of the State of Massachusetts, and the Grant Locomotive Works, a corporation established under the laws of the State of New Jersey, that on the 1st day of August, 1882, your petitioner, The Grant Locomotive Works, entered into a certain agreement with the said Toledo, Cincinnati and St. Louis Railroad Company, a corporation of the States of Ohio, Indiana, and Illinois, for the lease of ten certain locomotives and tenders made by the said Grant Locomotive Works, and numbered 57 to 66, both inclusive. A copy of the said agreement is hereto annexed and made part hereof.

Your petitioners further show that under said agreement the said Grant Locomotive Works duly delivered to said railroad company the ten locomotives described in said agreement on the terms and conditions therein stated and not otherwise, and especially upon the condition of the payment by the said railroad Co., as lessee, at the office of the said American Loan and Trust Co., in the city of Boston, of the following sums as rent for said locomotives:

On the 1st day of August, 1883	$20,000
On the 1st day of Aug., 1884	27,000
On the 1st day of Aug., 1885	27,000
On the 1st day of Aug., 1886	31,000

And also semi-annually, on the 1st days of February and August on each year, a sum equal to the half-yearly interest on the total amount of said rental remaining unpaid at the rate of six per cent. per annum.

And also to pay all taxes that may at any time be levied on said locomotives and all premiums for insurance that may be paid by said Grant Locomotive Works as lessor under the provisions of said agreement.

Your petitioners further show that they have respectively kept and performed all the covenants and obligations in said agreement named on their part to be kept and performed, but said railroad company made default in payment of the said twenty thousand dollars ($20,000), which became due and payable to your petitioners August 1st, 1883, and also defaulted in the semi-annual interest three thousand one hundred and fifty dollars ($3,150), which also became due and payable on the said 1st day of August last; and the said railroad company still neglects and refuses to make the said payments, although requested so to do.

Your petitioners further show that heretofore, on the 1st day of August, 1883, said railroad company being insolvent and unable to meet its current obligations, your honors duly appointed E. E. Dwight, Esq., to be receiver thereof, and said Dwight duly accepted said trust; and afterwards, under the orders of this court, W. J. Craig, Esq., succeeded to said trust as receiver herein.

All of which appears by the original proceedings in said cause in this honorable court; and said receivers entered into possession of said railroad and has seized and now retains possession of said ten locomotives and tenders and refuses to surrender the same to your petitioners.

And your petitioners further show that under said agreement, by reason of said default, your petitioners are entitled to the immediate possession of said ten locomotives and tenders, and, further, that the principal of the said one hundred and five thousand dollars ($105,000) six per cent. equipment trust bonds, series "C," mentioned in said agreement is now due and payable, and your petitioners, the Grant Locomotive Works, *is* the owner and holder of fifty-three thousand dollars ($53,000) of said bonds, and your petitioner, the American Loan and Trust Company, as trustee under said agreement, appears for all of said bonds.

And your petitioners further show that there is now due from the said receiver for rent of said locomotives from the said first day of August to the 20th day of October, 1883, six thousand dollars and interest, three hundred and fifty dollars, and that the total sum now due from the said receiver for rentals and interest under said contract included the twenty-three thousand one hundred and fifty dollars due on the 1st day of Aug. and interest thereon, three hundred and four and $\frac{66}{100}$ dollars, is thirty thousand eight hundred and four and $\frac{66}{100}$ dollars.

Your petitioners further show, upon information and belief, that the said locomotives and tenders have been depreciated in value by use upon said railroad $20,000.00 *dollars*, and that it will require fully that sum to put them in good marketable condition.

Wherefore your petitioners pray that the said receiver may be ordered to pay your petitioners the sum of $50,804.66 *dollars* in full of said rent, interest, and repairs, and that he may be ordered to forthwith surrender the said ten locomotives and tenders to your petitioners or their duly authorized agent, and, further, to pay your petitioners whatever amount may be found to be due after the sale of said locomotives and tenders and the application of the proceeds to the payment of the one hundred and five thousand dollars, with interest, in accordance with the terms of said agreement.

And this amount, when the same shall be duly determined to the satisfaction of your honors, and the said sum of $50,804.66 *dollars* now due for rent, interest, and repairs, your petitioners pray may be ordered and adjudged to be a charge upon all the property of said defendant railway company and its constituent companies or upon the proceeds of its sequestration as ahead of the first-mortgage bonds secured by said property.

And for such other and further relief as the nature of the premises may demand and to your honors may seem meet.

And your petitioners will ever pray.

WILSON AND JONES,
Solicitors for Grant Locomotive Works and the American Loan and Trust Co.

UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, } *ss:*

Bluford Wilson, being duly sworn, says that he is one of the solicitors for the petitioners in the above cause, and is familiar with the matters and things stated in said petition, and that the same

are true except where stated on information and belief, and those he believes to be true.

BLUFORD WILSON.

Sworn to before me and subscribed in my presence this 27th day of October, A. D. 1883.

ROB'T C. GEORGI,
Dep. Clk U. S. C. C., S. D. O. [SEAL.]

(Record, p. 570 to p. 584, incl.)

SCHEDULE A.

This agreement, made and entered into this first day of August, A. D. 1882, by and between the Grant Locomotive Works, a corporation established under the laws of the State of New Jersey and located at Paterson, in said State, locomotive manufacturers, party of the first part (hereinafter called the lessor), and the Toledo, Cincinnati and St. Louis Railroad Company, a corporation of the States of Ohio, Indiana, and Illinois, party of the second part (hereinafter called the lessee), witnesseth:

That the said lessor this day agrees to lease and does hereby lease, upon the terms hereinafter set forth, to the said lessee the following railroad equipment and rolling stock, viz., ten locomotives, made by the said Grant Locomotive Works, and numbered 57 to 66, both inclusive, with the privilege of using the same, at the said lessee's own risk, for the term of four years from the first day of August, 1882, at the expiration of which term the said lessee shall and will deliver up and return the same to the said lessor, in the city of Toledo, State of Ohio, in their present good order and condition, reasonable wear and tear alone excepted, and without excuse for non-delivery because of unavoidable accident unless purchased by the said lessee from the said lessor within the time and in the manner hereinafter specified.

The said lessee agrees to pay to the said lessor, on the days hereinafter set out, at the office of the American Loan and Trust Company, in the city of Boston, the following sums as rent for said railroad equipment and rolling stock:

On the 1st day of August, A. D. 1883, the sum of twenty thousand dollars ($20,000).

On the 1st day of August, A. D. 1884, the sum of twenty-seven thousand dollars ($27,000).

On the 1st day of August, A. D. 1885, the sum of twenty-seven thousand dollars ($27,000).

On the 1st day of August, A. D. 1886, the sum of thirty-one thousand dollars ($31,000).

And also semi-annually, on the first days of February and August in each year, a sum equal to the half-yearly interests on the total amount of said rental remaining unpaid, at the rate of six per cent. per annum; and also to pay all taxes that may at any time be levied or assessed upon said railroad equipment and rolling stock, and all

premiums for insurance that may be paid by the said lessor under the provisions of this agreement.

The said lessee further promises and agrees to execute and deliver to said lessor, simultaneously with the delivery of the equipment and rolling stock herein described, one hundred and five coupon equipment bonds, dated August 1st, 1882, each for the sum of one thousand dollars, representing the rental to be paid by the said lessee as aforesaid and having coupons attached representing interest upon said rental from the date of this lease to the date of payment of said bonds.

3. The said bonds and coupons shall be substantially in the form following respectively, to wit:

UNITED STATES OF AMERICA,

States of Ohio, Indiana, and Illinois.

The Toledo, Cincinnati and St. Louis Railroad Company Six Per Cent. Equipment Trust Bonds.

No. —. Series C. $1,000.

For value received the Toledo, Cincinnati and St. Louis Railroad Company promise to pay to the bearer, at the office of the American Loan and Trust Company, in the city of Boston, one thousand dollars on the first day of August, A. D. 188–, and, on presentation and surrender of the annexed coupons as they shall severally become due, to pay interest thereon at the rate of six per cent. per annum from August 1st, 1882, until payment or redemption of this bond.

This bond is one of a series of one hundred and five bonds of like amount and import, known as the Toledo, Cincinnati and St. Louis Railroad Company's equipment trust bonds, series C, which, with the coupons thereto attached, represent the rental for a term of four years of ten locomotives, under an agreement of lease thereof, bearing date the first day of August, A. D. 1882, made between the Grant Locomotive Works of Paterson, New Jersey, as lessor and the said railroad company as lessee.

It is provided in said agreement that the said railroad company shall semi-annually, on the first day of February and August of each year during the said term, beginning with February 1, 1883, pay to the said lessor at the said office of the American Loan and Trust Company a sum equal to the half-yearly interest upon said bonds remaining unpaid, which sums shall be applied to the payment of such of the said coupons as shall mature on such days respectively, and shall also pay to the said lessor at the said office of the said trust company on the first day of August, 1883, the sum of twenty thousand dollars; on the first day of August, 1884, the sum of twenty-seven thousand dollars; on the first day of August, 1885, the sum of twenty-seven thousand dollars; on the first day of August, 1886, the sum of thirty-one thousand dollars, which four sums when received shall be applied to the redemption of said bonds at

par severally falling due each year on said first day of August upon the surrender of such bonds and coupons.

It is further provided in said agreement that in case of a default in the payment of the sums of money as above specified or any part thereof on the day when the same falls due, or in default of the payment of any of said bonds at their maturity, or in case the said railroad company shall violate said agreement in any respect whatever the said lessor herein shall have the right and shall, upon the written request of the holders of a majority of the bonds of this series remaining unpaid, upon being indemnified for any expense it may incur in taking possession of and selling said locomotives, enter upon the premises of said railroad company and take possession of any and all said locomotives which shall have been delivered to said railroad company and have the right to sell the same at public or private sale and apply the proceeds to the payment of said bonds, and if there should be any deficit the said railroad company shall pay the same on demand.

It is further provided in said lease that said railroad company shall keep said locomotives in good repair at their own expense and shall, further, keep the same fully insured at their own expense, any loss being payable to said lessor for the holders of said bonds.

In witness whereof the seal of the said The Toledo, Cincinnati and St. Louis Railroad Company has been hereunto affixed and attested by the signatures of the president and secretary of said company, at Toledo, Ohio, the first day of August, A. D. 1882.

THE TOLEDO, CINCINNATI AND ST. LOUIS RAILROAD CO.,
—— ——, *President*,
By —— ——, *Secretary*.

Attest: —— ——.

$30.00. *Coupons.* No —.

The Toledo, Cincinnati and St. Louis Railroad Company, upon presentation and surrender of this coupon, will pay thirty dollars to the bearer, at the office of the American Loan and Trust Company, in the city of Boston, on the first day of ——, A. D. 188–, being six months' interest on its equipment trust bond No. — of series C.

—— ——, *Secretary*.

It is hereby further agreed that each of the said bonds after execution and before delivery thereof to the said lessor shall be countersigned or indorsed by the American Loan and Trust Company substantially as follows, viz:

The American Loan and Trust Company hereby certifies that this bond is one of the series of one hundred and five bonds issued under the provisions of the agreement mentioned within.

AMERICAN LOAN AND TRUST COMPANY,
By —— ——, *Actuary*.

It is further agreed that the sums to be paid by the said lessee as aforesaid semi-annually, on the first days of February and August in each year of the said term, shall be applied by the lessor to the payment of such of the said coupons as shall mature and fall due on such days respectively, and upon making such payment the coupons so paid shall be cancelled and surrendered to the said lessee; and the said sums of twenty thousand dollars, twenty-seven thousand dollars, twenty-seven thousand dollars, and thirty-one thousand dollars, to be paid by the said lessee as aforesaid on the first days of August of each year during said term, shall be applied by the lessor to the redemption of said bonds at par severally falling due each year on said first day of August upon the surrender of such bonds and coupons.

It is hereby further agreed that the said lessor and all persons, partnerships, and corporations who may become holders of the said bonds and coupons shall constitute, for the purposes of this agreement, and be known as the Massachusetts car trust, and that for the purposes of designating the equipment and rolling stock hereby leased as the property of the said lessor and as held by the said lessee under this agreement the said lessee shall cause to be painted in a conspicuous place and so that it can be plainly read upon each engine hereby leased the following, "Massachusetts car trust, series C," and that in the event that any such mark or designation is destroyed the lessee shall immediately restore the same, and that the said lessee shall do all such other things, whether in the execution of written instruments or otherwise, as the counsel of the lessor shall deem necessary for the protection of the said lessor or any member of the said Massachusetts car trust as owners of the said rolling stock.

It is further agreed that the lessee will not use nor allow the said railroad equipment and rolling stock to be used otherwise than as is herein permitted, nor remove nor allow the same to be removed from the railroads whereon the same may so lawfully be used, nor sell, assign, transfer, or dispose of the same or of this contract without the written consent of the said lessor first had and obtained, and that the said lessee shall and will at least once in each year during the continuance of the lease render to the said lessor a full and accurate statement and account of said railroad equipment and rolling stock.

It is further agreed that the said lessee shall keep the railroad equipment and rolling stock in proper and complete repair and working condition during the operation of this contract, reasonable wear and tear alone excepted, and such repairs and work done in order to keep the said equipment and rolling stock in such good order and condition shall be made and maintained to the satisfaction of the lessor.

It is further agreed that in case any portion of such rolling stock shall, during the continuance of this lease, from any cause, unavoidable accidents not excepted, be destroyed or injured beyond repair the said lessee shall and will, at its own cost and as often as may be necessary, replace the railroad equipment and rolling stock

that may be so destroyed or injured by other railroad equipment and rolling stock of equal value and of like material, character, and construction, and if all or either of them or any portion of each kind be in any way lost or destroyed or injured as aforesaid prior to actual redelivery to the lessor and the same are not replaced as above provided, then the full amount of the rental herein agreed to be paid and *and* the bonds representing the same shall, notwithstanding anything herein contained, become immediately due and payable and shall be paid by the said lessee to the said lessor; and in case said railroad equipment and rolling stock shall be returned to or be reclaimed by the said lessor under the provisions of this contract in a damaged condition the amount of any damage so done shall be paid by the said lessee to the said lessor, which said damage shall be conclusively determined without right of appeal by the written finding of all or of a majority of three arbitrators, to be appointed one by each of the parties of the first part and the second part and a third by the two first chosen. If within five days after notice to the party of the second part to name an arbitrator one be not named by them the party of the first part may forthwith name the three, who shall act with like effect as if they had been mutually chosen.

It is further agreed that the said lessee shall, at the request of the said lessor, have the said railroad equipment and rolling stock insured for the benefit of the said lessor and the said Massachusetts car trust as aforesaid to such an amount as may be required by the said lessor, and shall pay for and keep the said railroad equipment and rolling stock so insured for and during the continuance of this lease and contract and deposit the policies of insurance with the said lessor so indorsed that the loss, if any, shall be payable to the said lessor; but the said lessor may, at their option, cause insurance to be effected in such companies and in such manner as they may from time to time think best, and the said lessee shall and will, on demand, pay the premiums for such insurance and other expenses as may be incident thereto.

It is further agreed that said rolling stock shall be delivered for examination and acceptance to the general manager of the said lessee, and the receipt of the said general manager or of the secretary of the said lessee shall be final and conclusive evidence of the acceptance of each item of the rolling stock aforesaid to the satisfaction of the said lessee.

The said lessor shall have the right at all reasonable times and as often as they shall deem it advisable, by their agents or servants, to examine and inspect the said railroad equipment and rolling stock for the purpose of ascertaining whether the said lessee is complying with the terms of this contract, and the said lessee shall pay to the said lessor the reasonable expense of such examinations and inspections.

It is further agreed that the said lessee, in case the said lessor seize the said rolling stock and equipment or any part of it for any violation of the provisions of this agreement, shall, on demand of said lessor, place all of said rolling stock and equipment so seized

upon any side track or side tracks of said lessee and hold the same, without use or charge, subject to the order of said lessor and as their agent, and, if deemed advisable by said lessor, shall and will transport such equipment and rolling stock to any other point on the line of its railroad designated by the said lessor at the expense of the said lessee.

In case the said lessee shall fail to pay any of the sums of money herein agreed to be paid by it or any portion of any of said sums of money as and when the same are due and payable according to the true intent and meaning of this agreement, or in case it shall fail in any of the undertakings by it hereby entered into, or shall fail to perform any of the stipulations, promises, or agreements herein contained as on its part to be kept and performed, then and in that case the said lessor may, at their option, and shall, upon the written request of the holders of a majority of the bonds of this series remaining unpaid, upon being indemnified for any expense they may incur upon taking possession of and selling said cars, without notice, take possession of the said rolling stock and equipment and remove the same, and may and, unless they shall cancel and surrender or cause to be cancelled and surrendered to the said lessee the bonds and coupons issued as aforesaid and representing rent not then due or accrued according to the term- hereof, shall sell the same, with or without notice, at their option, at public or private sale, at their option, and apply the proceeds thereof, after deducting the expenses of such sale, to the payment of the then outstanding bonds and coupons; and if the amount realized from such sale shall be insufficient to pay the amount due upon such bonds and coupons, then the said lessee shall pay the deficiency upon demand, and in case of such proceedings the principal of all the bonds issued as aforesaid shall forthwith become due and payable.

After the said lessee shall have faithfully performed all the stipulations of this contract in the manner and form as herein provided without default and shall have made all the payments herein agreed to be made by it according to the true intent and meaning hereof, then the said lessee may, at its option, at any time within one month after the time of maturity as above of the last instalment of rent, purchase said railroad equipment and rolling stock at the price of one dollar, and upon the payment of said sum to them the said lessor shall thereupon by bill of sale convey said railroad equipment and rolling stock to said lessee.

Nothing herein contained and no action hereunder shall divest the title of said lessor to said railroad equipment and rolling stock until the rents above enumerated and the other sums of money herein agreed to be paid by the said lessee shall have been fully paid by said lessee, and until a bill of sale therefor shall have been delivered. Until after such payment and delivery the said railroad equipment and rolling stock shall remain the property of the said lessor, and no right whatever thereto shall pass to the said lessee, excepting that of using the same in strict compliance with the terms of this contract.

The said lessor may sell and assign the said rolling stock and

railroad equipment and this contract and lease, and any such sale and assignment shall vest in the assignee, and the assignee shall have and possess all the property, rights, powers, and remedies which are now held, owned, or possessed by or belong to the said lessor in respect of the said railroad equipment and rolling stock with the same effect as if this contract had originally been between such assignee and the said lessee.

In case of the non-payment of the principal of or interest on any or all of the aforesaid bonds there shall be no liability on the part of the said lessor or said American Loan and Trust Company to pay the principal of said bonds or the interest thereon, except to apply thereto the rentals to be paid by the said lessee as aforesaid; and there shall be no right of action by reason of such non-payment against said lessor or against said American Loan and Trust Company, and neither of them shall be made liable for any default of or non-payment by said lessee.

In witness whereof the said party hereto of the first part has caused these presents to be executed in its name and behalf and its corporate seal to be hereto affixed by —— ——, its ——, hereinto duly authorized, and the said party hereto of the second part has caused its corporate seal to be hereto affixed, attested by its secretary, and these presents to be signed by its president the day and year first above written.

Executed in duplicate.

STATE OF —,
County of —, } *ss:*

I, —— ——, do hereby certify that —— ——, personally known to me to be the same person whose name is subscribed to the foregoing instrument, having executed the same by authority and in behalf of the Toledo, Cincinnati and St. Louis Railroad Company, appeared before me this day in person and acknowledged that he caused the corporate seal of the said company to be affixed to and signed and delivered the said instrument as the free and voluntary act of the said company for the uses and purposes therein set forth.

Given under my hand and official seal this — day of ——, 188–.

—— ——.

THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, } *ss:*

I, Benjamin R. Cowen, clerk of the circuit court of the United States within and for the division and district aforesaid, do hereby certify that the foregoing exhibit is a true and correct copy of the same on file in this office.

Seal of the Circuit Court, South'n Dist. of Ohio.

In testimony whereof I have hereunto set my my hand and affixed the seal of said court, at the city of Cincinnati, O., this 23d day of January, A. D. 1890.

B. R. COWEN, *Clerk*,
By R. C. GEORGI, *Deputy*.

[Endorsed:] No. 3578. United States circuit court, southern district of Ohio, western division. Exhibit. Equipment lease. The Grant Loco. Works to The Toledo, Cincinnati and St. Louis R. R. Co.

(Record, p. 37.)

And afterwards, to wit, on the 1st day of November, A. D. 1883, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal V, p. 184.

This day came W. J. Craig, heretofore appointed receiver of the Toledo, Delphos and Burlington railroad, and filed his bond herein in the sum of ten thousand dollars, which is approved by the court. And thereupon the said William J. Craig took the oath prescribed by law and was duly qualified.

(Record, p. 585 to p. 588, incl.)

SCHEDULE B.

Circuit Court of the United States, Southern District of Ohio, Western Division.

THE CENTRAL TRUST COMPANY OF NEW YORK, a Corporation, Complainant,
against
GRANVILLE D. BRAMAN, THE TOLEDO, CINCINNATI AND ST. LOUIS RAILROAD COMPANY *et al*, Respondents.

In Equity. #3578.

Answer of W. J. Craig, Receiver.

Saving and reserving unto himself all exceptions and benefits arising to him on account of the insufficiencies of the petition of the complainants herein, the said W. J. Craig, receiver, etc., now comes and for answer to said petition admits the agreement of lease as set forth in said petition and admits default in payment according to the terms of the same as set forth in said petition, but denies that said locomotives and tenders have been depreciated in value to the extent of twenty thousand dollars ($20,000.00), as in said petition stated, and denies upon information and belief that they have been depreciated in any sum whatever, and avers that, on the contrary, they are now in good marketable condition. He denies, therefore, that there is anything due the petitioners in excess of the sum of thirty thousand eight hundred and four & $\frac{66}{100}$ ($30,804.66) dollars.

And this respondent, further answering, says that all said locomotives are in his possession as receiver and necessary to the successful operation by him of said road under and in accordance with the orders of this court herein, and he prays therefore that the court will, upon the hearing of this matter, make such order as will enable him to retain the possession and use of said locomotives and tenders

and at the same time fully protect the rights of the petitioners herein.

W. J. CRAIG,
By J. B. FORAKER,
His Solicitor.

UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, } *ss:*

W. J. Craig, being first duly sworn, says that his foregoing answer as receiver is true in so far as the statements therein made are based upon his personal knowledge, and in so far as the same are made upon information and belief he believes them to be true.

W. J. CRAIG.

Sworn to before me and subscribed in my presence by said W. J. Craig this 5th day of December, A. D. 1883.

CHARLES E. PRIOR,
[SEAL.] *Notary Pub., Hamilton Co., Ohio.*

SOUTHERN DISTRICT OF OHIO, *ss:*

A true and correct copy of the original on file in this office.

[Seal of the Circuit Court, South'n Dist. of Ohio.]

Attest: B. R. COWEN *Clerk,*
By ROB'T C. GEORGI, *Deputy.*

[Endorsed:] No. 3578. United States circuit court, southern district of Ohio, western division. The Central Trust Co. of New York *vs.* Granville D. Braman *et al.* Answer of W. J. Craig to intervening petition of American Loan and Trust Co. *et al.* Filed Dec. 6, 1883. Wm. C. Howard, clerk. J. B. Foraker, resp'd'ts' attorney.

(Record, p. 589 to p. 590, incl.)

SCHEDULE C.

J. B. Foraker, L. C. Black, N. Rockhold, J. R. Foraker.
Law office of Foraker & Black, rooms 44 & 45 Pike's Opera House.

CINCINNATI, *Dec.* 17, 1883.

Hon. Geo. R. Sage, Columbus, O.

DEAR SIR: Mr. Wilson is anxious to get his judgment. I don't know of any reason why he should not have it. He has prepared entries, to which I see no objection, in accordance with the distribution of his property.

I don't know of any good I could do by going with him to see you. By my answers I made no issue except as to damages, and by his decrees he waives that claim.

Very truly, J. B. FORAKER.

THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, } *ss:*

I, B. R. Cowen, clerk of the circuit court of the United States within and for the division and district aforesaid, do hereby certify that the foregoing is a true copy of the letter of J. B. Foraker on file in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Cincinnati, O., this 22nd day of January, A. D. 1890.

[Seal of the Circuit Court, South'n Dist. of Ohio.]

B. R. COWEN, *Clerk*,
By ROB'T C. GEORGI, *Deputy*.

[Endorsed:] No. 3578. United States circuit court, southern district of Ohio, western division. The Central Trust Co. *vs.* The T., C. & S. L. R. R. Co. Letter of J. B. Foraker. Filed Dec. 19, 1883. W. C. Howard, clerk.

(Record, p. 591 to p. 594, incl.)

SCHEDULE D.

THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, } *ss:*

At a stated term of the circuit court of the United States of America within and for the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms, at the city of Cincinnati, O., in said district, on the first day of October, being also the second day of that month, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States of America the one hundred and eighth—present, the Hon. Geo. R. Sage, district judge—on Saturday, the 22nd day of December, A. D. 1883, among the proceedings had were the following, to wit:

THE CENTRAL TRUST COMPANY OF NEW YORK, Complainant,
vs.
THE CINCINNATI NORTHERN RAILWAY CO. *et al.*
} In Chancery. No. 3578.

In the matter of the intervening petition of the Grant Locomotive Works and the American Loan and Trust Company.

The said cause came on to be heard upon the petition and the answer of the receiver thereto and upon the evidence submitted on behalf of said petitioners.

And it appearing to the satisfaction of the court that the receiver has in his possession Grant locomotive numbered 63, and is using the same in the operation of the said Cincinnati Northern Railway

Company between Cincinnati and Dayton, Ohio, and that the said locomotive is one of the ten covered by the agreement of lease set out in said petition, and was acquired by the Toledo, Cincinnati and St. Louis Railroad Company, one of the defendants, under the terms of said agreement, and was so held at the date of the appointment of the receiver herein;

And it further appearing that *that* the present receiver or his predecessor took the said locomotive, with its tender, into his possession as such receiver on the first day of August last, and has had the same in continuous use and possession since that date without having made any payment on account of rental, as provided in said indenture of lease, or other compensation for the use thereof;

And it further appearing that the said locomotive is, in the judgment of the receiver, necessary to the proper operation of said railway and should be acquired as part of its permanent equipment, and that the value of said locomotive and tender as fixed in said agreement of lease is reasonable, and that the petitioners are willing, upon the receipt of the contract price or upon being adequately secured therein, to transfer the title of the same to the receiver;

And the matter being fully heard by the court, and upon due deliberation thereon, it is hereby ordered, adjudged, and decreed that the receiver pay to the said petitioners, as rental for said locomotive and tender and in full for all claims for rental, interest, and repairs down to the first day of December, 1883, the sum of $2,361.30, the same being the amount due to said date under the terms of said lease.

And the further sum of $8,670.00, balance in full as purchase-money for said locomotive and tender.

And it is further ordered that the receiver pay said several amounts as part of the operating expenses of the said railway out of any money not appropriated for the payment of current labor, supplies, and taxes.

And it is further ordered and decreed that the said several amounts, with interest thereon at the rate of six per cent. from the first day of December, 1883, shall be a charge upon the earnings, income, and all the property of the said Cincinnati Northern Railway Company as ahead of the first-mortgage or other bonded debt of said company, and any balance of said several amounts remaining unpaid at the date of the foreclosure and sale of the said railway shall be a first lien thereon, and the said sale shall be made subject thereto.

THE UNITED STATES OF AMERICA, }
Southern District of Ohio, Western Division, } *ss:*

I, Benjamin R. Cowen, clerk of the circuit court of the United States within and for the division and district aforesaid, do hereby certify that the foregoing entry is truly taken and correctly copied from the journal of said court.

In testimony whereof I have hereunto set my hand and affixed

the seal of said court, at the city of Cincinnati, O., this 22nd day of January, A. D. 1890.

[Seal of the Circuit Court, South'n Dist. of Ohio.]

B. R. COWEN, *Clerk*,
By R. C. GEORGI, *Deputy*.

[Endorsed:] No. 3578. United States circuit court, southern district of Ohio, western division. The Central Trust Co. *vs.* The Toledo, Cincinnati and St. Louis R. R. Co. Decree. Filed Dec. 22, 1883. W. C. Howard, clerk.

(Record, p. 40 to 41, incl.)

And afterwards, to wit, on the 22nd day of Dec., 1883, an entry was made upon the journal of said court clothed in the words and figures following, to wit:

Journal V, p. 217.

This said cause came on to be heard upon the petition and the answer of the receiver thereto and upon the evidence submitted on behalf of said petitioners.

And it appearing to the satisfaction of the court that the receiver has in his possession Grant locomotive- No-. 57 to 62, inclusive, and 64 to 66, inclusive, with tenders, and is using the same in the operation of the said Southeastern Division of the def't Co.'s R. R. between Dayton, Ohio, and ——, Ohio, and that the said locomotives are nine of the ten covered by the agreement of lease set out in said petition, and were acquired by the Toledo, Cincinnati and St. Louis Railroad Co. under the terms of said agreement, and *was* so held at the date of the appointment of the receiver herein;

And it further appearing that the present receiver or his predecessor took the said locomotives, with *its* tender-, into his possession as such receiver on the first day of August last, and has had the same in continuous use and possession since that date without having made any payment on account of rental, as provided in said indenture of lease, or other compensation for the use thereof; and it further appearing that the said locomotives are, in the judgment of the receiver, necessary to the proper operation of said railway and should be acquired as part of its permanent equipment, and that the value of said locomotive- and tender- as fixed in said agreement of lease is reasonable, and that the petitioners are willing upon the receipt of the contract price or upon being adequately secured therein to transfer the title of the same to the receiver;

And the matter being fully heard by the court, and upon due deliberation thereon, it is hereby ordered, adjudged, and decreed that the receiver pay to the said petitioners, as rental for said locomotive- and tender- and in full for all claims for rental, interest, and repairs down to the first day of December, 1883, the sum of $21,252.70, the same being the amount due to said date under the terms of said lease.

And the further sum of $78,030.00, balance in full as purchase-money for said locomotives and tenders.

And it is further ordered that the receiver pay said several amounts as part of the operating expenses of the said Southeastern Division out of any money not appropriated for the payment of current labor, supplies, and taxes.

And it is further ordered and decreed that the said several amounts, with interest thereon at the rate of six per cent. from the first day of December, 1883, shall be a charge upon the earnings, income, and all the property of the said Toledo, Cincinnati and St. L. R. R. Co., and especially of said S. E. Division, prior to the first-mortgage or other bonded debt of said railroad and said division thereof, and any balance of said several amounts remaining unpaid at the date of the foreclosure and sale of the said railroad or said division shall be a first lien thereon and the said sale shall be made subject thereto.

And afterwards, to wit, on the 7th day of March, A. D. 1884, an entry was made upon the journal of said court clothed in the words and figures following, to wit:

Journal V. page 278.

In the matter of the intervening petition of the Grant Locomotive Works and the American Loan and Trust Co.

Upon motion of The Central Trust Company, complainant, and for good cause shown it is ordered that the decree heretofore made in this cause on the 22nd day of December, 1883, whereby it was ordered, adjudged, and decreed that the receiver heretofore appointed in this cause pay to said petitioners aforesaid out of any moneys in his hands not specifically appropriated the sum of twenty-one thousand two hundred and fifty-two dollars $\frac{70}{100}$ ($21,252.70) in full for the rent up to December 1st, 1883, of the Grant locomotives No-. 57 to 62, inclusive, and from 64 to 66, inclusive, up to Dec. 1, 1883, and the further sum of seventy-eight thousand and thirty dollars ($78,030.00) as the balance of the purchase-money due upon said locomotives, and that the same, with interest at the rate of six per cent. per annum, be a first and best lien upon the property of the said Toledo, Cincinnati and St. Louis R. R. Co., and especially of the Dayton and Southeastern Division-, and that any sale thereof take place subject to the same, be, and the same hereby is, suspended until the further order of this court; to all of which the petitioner-aforesaid objects.

(Record, p. 45 to p. 46, incl.)

And afterwards, to wit, on the 7th day of March, A. D. 1884, an entry was made upon the journal of said court clothed in the words and figures following, to wit:

Journal V, page 278.

In the matter of the intervening petition of Grant Locomotive Works and the American Loan and Trust Co.

Upon motion of The Central Trust Company, complainant, and for good cause shown it is ordered that the decree heretofore made in this cause on the 22nd day of December, 1883, whereby it was ordered, adjudged, and decreed that the receiver heretofore appointed in this cause pay to said petitioners aforesaid out of any moneys in his hands not specifically appropriated the sum of twenty-three hundred and sixty-one $\frac{30}{100}$ dollars ($2,361.30) in full for the rent up to December 1st, 1883, of the Grant locomotives No. 63 *up to Dec. 1, 1883*, and the further sum of eight thousand six hundred and seventy dollars as the balance of the purchase-money due thereon, and that the same, with interest thereon at the rate of six per cent. per annum, be a first and best lien upon the property of the said Cincinnati Northern R'y Co. and of the said Cincinnati, Spring Grove and Avondale R'y Co., — that any sale thereof take place subject to the same, be, and the same hereby is, suspended until the further order of this court; to all of which the petitioner- aforesaid objects.

(Record, p. 47 to p. 63, incl.)

And afterwards, to wit, on the 31st day of March, A. D. 1884, an entry was made upon the journal of said court clothed in the words and figures following, to wit:

Journal V, p. 323.

Decree for the sale of the Toledo, Delphos and Burlington railroad, commonly known as the Southeastern Division of the Toledo, Cincinnati and St. Louis railroad.

This cause came on further to be heard at this time and was argued by counsel; and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed as follows, viz:

The court finds upon the pleadings, exhibits, and evidence that heretofore and prior to the 16th day of May, 1881, the Dayton and Southeastern Railroad Co. was a corporation created by and existing under the laws of the State of Ohio, and that the Toledo, Delphos and Burlington Railroad Company at that time was a corporation created by and existing under the laws of the States of Ohio and Indiana, and that prior to said date the said two companies duly and lawfully became and were consolidated into one corporation under the name of the Toledo, Delphos and Burlington Railroad Co., and that said last-named consolidated corporation was created by and continued to exist under the laws of the States of Ohio and Indiana, and is the defendant in this case.

The court further finds that on said 16th day of May, 1881, the said last-mentioned corporation, The Toledo, Delphos and Burlington Railroad Co., defendant herein, was the owner of or about to construct and equip the lines of railroad and appurtenances herein-

after described from a point in the city of Dayton, Ohio, through the counties of Montgomery, Greene, Fayette, Ross, Vinton, and Jackson, in said State, and thence in a branch line through the counties — Jackson, Gallia, and Lawrence, in said State, to a connection with the Ironton and Huntington railroad at or near the city of Ironton, in Lawrence county, Ohio, and that on said 16th day of May, 1881, in pursuance of proper corporate authority, the said defendant, The Toledo, Delphos and Burlington Railroad Company, did execute its two thousand two hundred and fifty bonds for the sum of one thousand dollars each, dated the day last aforesaid, payable in gold coin of the United States on the 1st day of April, 1921, said bonds bearing interest at the rate of six per cent. per annum, payable semi-annually, on the 1st days of April and October in each year, in gold coin, at the city of New York or at London, England, each of said bonds having interests warrants or coupons for thirty dollars each thereto attached for payment of interest as aforesaid, and that the said The Toledo, Delphos and Burlington Railroad Co., defendant herein, issued and sold or caused to be sold two thousand two hundred and fifty of said bonds, with said interest warrants or coupons attached, all of which bonds were, before the same were issued as aforesaid, duly certified or authenticated by the complainant herein as trustee, and that said bonds are now in the hands of divers and sundry persons as holders thereof; but this finding, as to the amount and validity of said bonds, is to be taken and held as conclusive only upon the said railway companies defendant, and, so far as said finding effect- the right of bondholders between themselves and all questions relating thereto, *are* reserved for further consideration.

And the court further finds that in order to secure the payment of the principal and interest of *aid* bonds as the same should mature the said defendant, The Toledo, Delphos and Burlington Railroad Co., formed by consolidation as aforesaid, did, on or about said 16th day of May, 1881, in pursuance of proper corporate authority, execute and deliver to the complainant herein, a corporation created by and existing under the laws of the State of New York, a certain deed or indenture of trust and mortgage, which said deed or indenture of trust and mortgage was duly recorded in the several counties in and through which said railroad was situated and extended, to wit, in the counties of Montgomery on May 26, 1881; in the county of Greene on May 29th, 1881; in the counties of Fayette and Ross on May 28, 1881; in the counties of Vinton and Jackson on May 30, 1881; in the county of Gallia on May 31, 1881; in the county of Lawrence on June 1st, 1881, all in the State of Ohio, and thereby did grant, bargain, sell, and convey unto the complainant herein, its successors, all and singular its line of railroad as the same then was or should thereafter be constructed between the crossing at 3rd street, in Dayton, Ohio, being the western terminus of said division, and thence with the line of said road through the counties of Montgomery, Greene, Fayette, Ross, Vinton, and Jackson, and thence on its branch line through the counties of Jackson, Gallia, and Lawrence to a connection with the Ironton and Huntington

Railroad Co. at or near the city of Ironton, in the county of Lawrence, all in the State of Ohio, being about one hundred and eighty miles in length, together with all and singular the right of way, road-bed, made or to be made, its tracks, laid or to be laid, between the terminal points aforesaid, together with all the stations, depot grounds, rails, fences, bridges, sidings, engine-houses, engines, cars, machine shops, buildings, erections in any way then appertaining or which should thereafter appertain unto said above-described line of railroad between said points, together with all machinery, supplies, tools, and fixtures then or which should be at any time thereafter held or owned or acquired by the said defendant, The Toledo, Delphos and Burlington Railroad Co., in use in connection with its line of railroad aforesaid between said point-, and all its depot grounds, yards, sidings, turnouts, shed-, machine shops, leasehold rights then or which should be thereafter owned by said last-mentioned railroad Co. in connection with its line of railroad aforesaid between said points, together with all and singular the powers, privileges, and franchises thereto belonging, and the tolls, income, and revenue to be levied or derived therefrom; to have and to hold said granted premises unto the complainant herein and its successors forever, in trust, nevertheless, for the uses and purposes in said indenture and hereinafter expressed.

And the court further finds that in and by said mortgage or deed of trust it was, among other things, provided, and the said defendant herein, The Toledo, Delphos and Burlington Railroad Co., did therein covenant and agree, that if the interest due on any of said bonds should not be paid by the said last-mentioned railroad Co. when the same should become due, and if the same should remain in arrear for 6 months after the same was actually demanded, at the place where the same was payable, as specified in the coupons given to evidence such interest, or in case the principal of any of said bonds should not be paid at maturity, it should then be lawful in any of said events for the complainant herein or its successors in said trust, and that it should be the duty of said complainant, upon request in writing so to enter by the holders of not less than one-half of the then outstanding bonds of said date of May 16, 1881, to forthwith demand, enter, take, and maintain possession of all and singular the railroad, premises, and franchises in said indenture conveyed as the attorney-in-fact or agent of said defendant, The Toledo, Delphos and Burlington Railroad Co., and the same to have, use, manage, operate, and enjoy and receive all the tolls, income, and revenue thereof after deducting expense of use, operation, repairs, alterations, and additions and a fair compensation for the services of the complainant herein for such taking possession and management while in possession, and to apply the remaining income and revenue arising from the use of said property coming to the hands of said complainant to the payment of the interest in default and maturing from time to time, satisfying said coupons in the order of their several maturities, and thereafter to apply the residue upon the principal of said then outstanding bonds; and the court further finds that it was also provided in said mortgage or deed of trust that if a six

months' default should occur in the payment of either the principal or interest of any of the bonds aforesaid after such actual demand as aforesaid, then it should be law- for the complainant herein, upon the written request of the holders of a majority in amount of the said bonds then outstanding, with or without entry, to cause all and singular the premises, railway and appurtenances, equipment and franchises conveyed as aforesaid to said complainant herein to be sold as an entirety by public auction to the highest and best bidder, at the city of Dayton, Ohio, after giving at least sixty days' notice of the time, place, and terms of sale by advertisement in a newspaper of general circulation in the city of Dayton and like advertisement in a newspaper of general circulation in the city of New York, and that on such sale the said complainant herein or its successor in said trust should make, execute, and deliver unto the purchaser or purchasers thereof at said sale a good and sufficient deed in fee simple conveying the said railroad, property, and franchises so sold, and that such conveyance thereof should be a perpetual bar in law and equity against the said defendant herein, the said Toledo, Delphos and Burlington Railroad Co., its successors and assigns, and against all persons claiming or to claim under it of all right title and interest or claim of, in, or to said premises or franchises or any part thereof, and that upon sale the complainant, after deducting from the proceeds thereof the costs and expenses of said sale and a reasonable compensation to said complainant and its attorneys and agents for services in connection therewith, should apply so much of the proceeds as might be necessary to the ratable payment of principal and then to the accrued interest of all the said bonds, whether said principal should be then due or not, and that if any proceeds of said sale should remain in the hands of the complainant after full payment of the said principal and interest the complainant herein should render and pay over the same to the said defendant herein, The Toledo, Delphos and Burlington Railroad Co., or its successors and assigns.

And the court further finds that the said railroad Co., The Toledo, Delphos and Burlington Railroad Co., defendant herein, has failed to pay the interest on said bonds issued on said 16th day of May, 1881, and has made default therein to all the holders thereof, and that said company has failed to pay the interest warrants or coupons due on said bonds Oct. 1, 1882, April 1, 1883, and October 1, 1883, and that the payment of said coupons falling due respectively October 1st, 1882, and April 1, 1883, was actually demanded more than six months prior to the commencement of this suit, at the place where the same was payable, as specified in the coupons given to evidence the same, and that the said interest warrants or coupons falling due at the dates last aforesaid have not been paid, and that the same ever since then have been and now are in arrear and unpaid.

And the court further finds that the holders of a majority of said first-mortgage bonds of May 16, 1881, outstanding at the time of said demand did, prior to the commencement of this suit, serve upon the complainant herein due request in writing requiring it to

institute this suit to foreclose said mortgage or deed of trust and sell said railway and property of the said defendant, The Toledo, Delphos and Burlington Railroad Co., and for other relief as prayed for in the bill of complaint herein, and that this suit was begun in pursuance thereof.

And the court further finds that the said defendant herein, The Toledo, Delphos and Burlington Railroad Co., proper corporate authority for that purpose having first been had, did, on the said 16th day of May, 1881, execute and deliver to the complainant herein, as trustee, a certain other indenture of trust and mortgage of that date, whereby it did grant, bargain, sell, and convey unto the complainant herein, as trustee, its successors or assigns, all the railroad, property, rights, franchises, goods, and chattels hereinbefore mentioned and the net income thereof, and to secure the payment at maturity of the principal of two thousand seven hundred and fifty bonds of the defendant, The Toledo, Delphos and Burlington Railroad Co., known as income bonds, one thousand seven hundred and fifty being for one thousand dollars each, numbered consecutively from 1 to 1750, both inclusive, and 1,000 thereof being for $500 each, numbered from 1 to 1000, both inclusive, payable on the 1st day of April, 1921, and of such interest upon the said bonds as might become due thereon according to the terms of said bonds of said indenture.

And the court further finds that under the terms of said bonds and of said indenture no interest has accrued or is due or payable on said last-mentioned bonds, and that said last-mentioned mortgage was duly recorded in each of the said counties in which said first mortgage was recorded, so as to constitute a second lien or mortgage upon the said railroad and property hereinbefore described, and that the same is a second lien or mortgage thereon, except as hereinafter stated.

And the court further finds that all of said income or second-mortgage bonds have been issued and disposed of by the defendant, The Toledo, Delphos and Burlington Railroad Co., and are now in the hands of divers persons as owners thereof.

And the court further finds that all the aforesaid powers, privileges, immunities, franchises, and property, real, personal, and mixed, belonging to the said defendant herein, The Toledo, Delphos and Burlington Railroad Co., at the date of the said indentures of mortgage hereinbefore mentioned, or subsequently acquired by it, became and are, by virtue of the several consolidations of the several and respective corporations mentioned in the bill of complaint herein, vested in the defendant herein, The Toledo, Cincinnati and St. Louis Railroad Co., prior to the commencement of this suit.

And the court finds that by virtue of said several consolidations the said defendant, The Toledo, Cincinnati and St. Louis Railroad Co., prior to the commencement of this suit—

And the court finds that by virtue of said several consolidations the said defendant, The Toledo, Cincinnati & St. Louis Railroad Co., did undertake to pay all the debts and liabilities of the said several respective companies, including the defendant herein, the said The Toledo, Delphos and Burlington Railroad Co., and did by said consolidation

recognize and assume the payment of the mortgages hereinbefore mentioned, and that said respective consolidations were subject and subordinate to the rights of the holders of the bonds secured by said several mortgages hereinafter mentioned, and were without prejudice to the right to sell the said property, hereinbefore mentioned, of the said defendant, The Toledo, Delphos and Burlington Railroad Co., by virtue of the said several mortgages or deeds of trust made by said company to the said complainant herein on said 16th day of May, 1881.

And the court further finds that said defendant herein, The Toledo, Cincinnati and St. Louis Railroad Co., is and was at the time the bill of complaint herein was filed insolvent, and that it has failed to pay the interest which fell due October 1, 1882, April 1, 1883, and October 1, 1883, on the aforesaid first-mortgage bonds issued by the defendant herein, The Toledo, Delphos and Burlington Railroad Co., on said 16th day of May, 1881, or any part thereof, and that the same and every part thereof has ever since then remained unpaid, although payment thereof has been duly demanded, as hereinbefore found.

And the court does further find that by reason of the said default of the said defendant herein, The Toledo, Delphos and Burlington Railroad Co., and of the defendant, The Toledo, Cincinnati and St. Louis Railroad Co., to pay said interest the condition of said mortgage or deed of trust hereinbefore first mentioned, made by the said defendant, The Toledo, Delphos and Burlington Railroad Co., to the complainant herein May 16, 1881, has been broken and said mortgage or deed of trust has become absolute, and the complainant herein is entitled to a decree for the sale of all the property and rights of the said defendant, The Toledo, Delphos and Burlington Railroad Co., included in said first mortgage, save as hereinafter excepted.

It is therefore considered, adjudged, and decreed that the said defendant, The Toledo, Cincinnati and St. Louis Railroad Co., shall, within ten days from this date, pay into this court, for the use and benefit of the holders of the unpaid coupons of said first-mortgage bonds of the said Toledo, Delphos and Burlington Railroad Co., dated on said 16th day of May, 1881, the sum of two hundred and two thousand and five hundred dollars, with interest, at the rate of six per cent. per annum, from October 1st, 1882, till paid, on sixty-seven thousand five hundred dollars, a part of said sum, and like interest from April 1, 1883, till paid, on sixty-seven thousand five hundred dollars, a part of said sum, and like interest from October 1, 1883, till paid, on sixty-seven thousand five hundred dollars, a part of said sum, and also that within the same time the said defendant, The Toledo, Delphos and Burlington Railroad Company, or the said defendant, *or* The Toledo, Cincinnati and St. Louis Railroad Co., pay into this court the sum of twenty thousand dollars, to be applied to the payment of the costs, charges, and expenses of the complainant herein in this behalf, including its counsel fees, and also to be applied to the payment of all indebtedness incurred by order of this court by William J. Craig, as receiver in the cause of

the said The Toledo, Delphos and Burlington Railroad Co., the defendant herein.

And it is further considered, adjudged, and decreed that, in default of such payment within said time by all defendants in this case or by all holders of bonds secured by the second or income mortgage described in the bill of complaint herein, all equity of redemption of the said defendant, The Toledo, Delphos and Burlington Railroad Co., and of the said defendant, The Toledo, Cincinnati and St. Louis Railroad Company, and of the defendant, Granville D. Braman, and of all parties to this suit, including the holders of the bonds last aforesaid, of, in, and to the said mortgaged premises, rights, assets, and franchises, and every part and parcel thereof, described and embraced in said first mortgage made by said The Toledo, Delphos and Burlington Railroad, defendant herein, on said 16th day of May, 1881, be, and the same is, forever barred and foreclosed; which said mortgaged premises, property, assets, rights, and franchises are hereinbefore and in said bill of complaint, to which reference is now had for that purpose, fully described, including all property embraced within the terms of said first mortgage of said defendant herein, The Toledo, Delphos and Burlington Railroad Co., acquired since the date of said mortgage and owned by it at the time of the consolidation with the said Toledo, Cincinnati and St. Louis Railroad Co., the defendant in this cause, and that in default of said payments or of any of them all said mortgaged premises, rights, and franchises be sold upon proper order of sale, to be issued herein, in the manner and upon the terms hereinafter directed: Said property shall be sold at public auction, at the front door of the court-house, in this court, in the city of Cincinnati, in the State of Ohio, on a day to be named by the commissioner herein appointed in his advertisement of sale, and previous notice of the time and place and terms of said sale shall be given by publication, beginning not less than 60 days prior to the time of said sale, and to be repeated weekly until the sale, in two daily newspapers of general circulation, one published in the city of Cincinnati, Ohio, and other one in the city of New York: Provided, that nothing in this decree shall be deemed as authorizing the sale herein of any part of the railroad or property of the Iron Railroad Co. ordered to be sold in case #3579 of this court, except such rights as the defendant herein, The Toledo, Delphos and Burlington Railroad Co., may have acquired in the road-bed of said Iron Railroad Co. by virtue of a certain contract for laying down and maintaining a third rail on said road-bed of said Iron Railroad Co., entered into on the 30th day of July, 1881, between said Iron Railroad Co. and The Toledo, Delphos and Burlington Railroad Co., defendant herein, prior to the consolidation of the said Iron Railroad Co. with the said Toledo, Delphos and Burlington Railroad Co.

And the said commissioner making said sale shall accept no bid from any bidder who shall not first place in his hands or deposit with him, as a pledge that he will make good his bid in case of its acceptance by the court, the sum of twenty thousand dollars ($20,00.00) in money or the said first-mortgage bonds of the said defendant

herein, The Toledo, Delphos and Burlington Railroad Co., of date May 16, 1881, to the amount of fifty thousand dollars exclusive of interest.

And it is further ordered that of the purchase price so bid not less than the sum of $20,000 shall be paid in cash, and also such further portions — from time to time direct, in order to meet other claims which this court may adjudge in this case to be prior in equity to the said first mortgage; the court reserving the right to resell in this case said premises and property upon failure to comply within twenty days with any order of this court in that regard, and the balance of said purchase price not required to be paid in cash may be paid either in cash or the purchaser at said sale shall have the right to satisfy his bid in whole or in part by paying over and surrendering such of said first-mortgage bonds of said defendant herein, The Toledo, Delphos and Burlington Railroad Co., of date May 16, 1881, and overdue and unpaid coupons belonging thereto as this court shall hereafter declare to have been properly sold and are valid obligations in the hands of the present holders at such price or value as would be equivalent to the distributive amount as the holders thereof would be entitled to receive there*of* in case the whole amount of the bid were to be paid in cash; and it is further ordered that as to so much of said purchase price as is hereby required to be paid in cash the same shall be payable in cash or by the surrender *to be paid in cash the same shall be payable in cash or by the surrender* of certificates of indebtedness issued by said Craig as receiver of and while in this cause; and it is further ordered that the fund to arise from said sale shall be applied as follows:

1. To the payment of the costs in this suit, and also compensation to the complainant herein for its services, charges, and expenses, including its counsel fees, in the execution of said trust, and to all proper expenses of sale.

2nd. To the payment of expenses incurred and to any certificates of indebtedness of said receiver issued by order of this court in the performance of his duties as such receiver in this cause, and to the payment of any other claims which have been or which may be adjudged by this court in this cause to have priority over said first mortgage; and the receiver is hereby required to transfer and convey to said purchaser or purchasers all property or rights which he may have acquired in the administration of said trust.

3rd. To the payment of said first-mortgage bonds of said defendant herein, The Toledo, Delphos and Burlington Railroad Co., of date May 16, 1881, and past-due coupons to the same belonging, with interest, accrued and to accrue, to the holders thereof, which this court may hereafter adjudge to have been duly issued and disposed of and are valid obligations against said defendant in the hands of their present holders.

4th. The surplus, if any, to be paid into this court subject to its further order in that regard.

And Simeon Harris, Esq., is hereby designated and directed as special master commissioner to make the sale hereby decreed and to convey the property hereby ordered sold to the purchasers thereof;

and it is further ordered, adjudged, and decreed that the purchaser or purchasers of the property herein ordered to be sold shall be invested with and shall hold, possess, and enjoy the said mortgaged premises and property and all the rights, privileges, and appurtenances appertaining thereto as fully and completely as the said defendant herein, the said The Toledo, Delphos and Burlington Railroad Co., or the said defendant herein, The Toledo, Cincinnati and St. Louis Railroad Co., now holds or enjoys or is entitled to hold or enjoy the same.

And further that such purchaser or purchasers shall have and be entitled to hold said railroad and property free and discharged from the lien or incumbrance of the said several mortgages or deeds of trust in the bill of complaint in this cause mentioned and from the claims of all parties of this suit, to wit:

1. The mortgage or deed of trust made by the said defendant herein, The Toledo, Delphos and Burlington Railroad Company, May 16, 1881, to the complainant herein to secure the first-mortgage bonds of said railroad company to the amount of two million two hundred and fifty thousand dollars.

2nd. That certain other mortgage or deed of trust made by the said last-mentioned railroad Co. to the complainant on the said 16th day of May, 1881, to secure the payment of the income bonds of the said defendant, The Toledo, Delphos and Burlington Railroad Co., amounting to two million two hundred and fifty thousand dollars.

3rd. All the claims of the defendant, Grenville D. Braman, and of all other parties to this suit.

And this cause is now adjourned for further consideration.

(Record, p. 64 to p. 73, incl.)

And afterwards, to wit, on the 15th day of March, A. D. 1884, the following petition was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Petition for Rehearing.

Circuit Court of the United States, Southern District of Ohio, Western Division.

THE CENTRAL TRUST COMPANY OF NEW YORK, a Corporation, *versus* THE TOLEDO, DELPHOS AND BURLINGTON R. R. Co., The Toledo, Cincinnati and St. Louis Railroad Co., and Grenville D. Braman.	In Chancery. # 3578.

To the judges of the circuit court for the southern district of Ohio:

Your petitioner, The Central Trust Company, a corporation under the laws of New York, showeth unto your honors that it is the complainant in this cause, having filed herein, on the 20th day of October, 1883, its certain bill of complaint praying for the foreclosure of

a certain first mortgage upon the said Toledo, Delphos and Burlington railroad, extending from Dayton, Ohio, to Ironton, Ohio, in the southern district of said State, in which mortgage your petitioner was the mortgagee, and in said bill of complaint further praying for the sale by the order of this court of the said railroad and its property included in said mortgage in order to pay the bonds thereby secured, and for the appointment of a receiver, as will more fully appear by said bill of complaint, to which reference is hereby made for greater certainty in that behalf; and on the 20th day of October, 1883, by order of this court one William J. Craig was duly appointed receiver of all the property of said railroad company specified in said bill of complaint, and he is now and ever since then has been in possession thereof as such receiver.

And your petitioner further showeth unto your honors that on the 27th day of October, 1883, the American Loan and Trust Co. and the Grant Locomotive Works by leave of this court filed in this cause their certain intervening petition setting forth that on the first day of August, 1883, the said Grant Locomotive Works had entered into an agreement with the Toledo, Cincinnati and St. Louis Railroad Co. for the lease of ten locomotives and tenders of the manufacture of said locomotive works and numbered from 57 to 66, both inclusive, and annexed a copy of said agreement to said petition as part thereof, and that said locomotive works did deliver to said Toledo, Cincinnati and St. Louis Railroad Co., in pursuance of said alleged agreement, said ten locomotives and tenders, the rent of same to be paid by said last-mentioned railroad company at the office of said American Loan and Trust Co. as follows:

1st of August, 1883	$20,000
1st of August, 1884	27,000
1st of August, 1885	27,000
1st of August, 1886	31,000

and to pay on the 1st days of February and August of each year a sum equal to the half-yearly interest on the total amount of said rental at rate of six per cent. per annum, and also to pay all taxes and insurance premium on said locomotives and tenders; and said petition further averred that said Toledo, Cincinnati and St. Louis Railroad Co. failed to pay said rent falling due August 1, 1883, to wit, $20,000, and the said interest on the same, amounting to $3,150, and that by order of this court, on the 1st day of August, 1883, one E. E. Dwight was appointed receiver of said last-mentioned railroad company, and that subsequently William J. Craig was appointed by this court receiver in the place of said Dwight; and said petition further set forth that by reason of said default said Grant Locomotive Works became entitled to take possession of said locomotives and tenders, and that the $105,000 of trust equipment bonds provided for in said agreement had become due, of which said locomotive works owned $53,000 and said American Loan and Trust Co., as trustee under said agreement, appeared for the balance; and said petition alleged that there was due from "said receiver" $30,804.66 on account of rent and interest from said locomotives and tenders

and the further sum of $20,000 for alleged depreciation in value of said rolling stock by use thereof upon said railroad, making a total of $50,804.66, which said petition prayed "the said receiver may be ordered to pay, and that he forthwith surrender to said petitioners the said locomotives and tenders, and to pay said petitioners, with interest, such part of said sum of $105,000 as might remain due after the sale of said locomotives and tenders, and the application of the proceeds thereof towards the payment of said sum of $105,000, and that said balance, when the same should have been determined to the satisfaction of your honors, and the said sum of $50,804.66 be adjudged a charge upon all the property of said defendant railway company and its constituent companies ahead of the first-mortgage bonds thereon."

Your petitioner says no process was issued or order made requiring it to answer said petition, and that it would have denied all the allegations thereof had it been required to answer thereunto; and your petitioner further says that upon the allegations of said petition the said petitioners therein procured to be entered in this cause by the court, on the 22nd day of December, 1883, a certain order or decree purporting on its face to have been made after a hearing on evidence by the court of the questions involved and purporting to find that "the receiver" had then in his possession Grant locomotives No-. 57 to 62, inclusive, and 64 to 66, inclusive, and that he was "using the same in the operation of the Southeastern Division of the said Toledo, Cincinnati and St. Louis Railroad Company's railroad between Dayton and ——, Ohio," and that said engines were nine of those acquired by said Toledo, Cincinnati and St. Louis Railroad Co. under said alleged agreement hereinbefore referred to; and said order further purported to find that said receiver or his predecessor took possession of said locomotives and tenders on August 1st, 1883, and had used the same ever since without compensation, and that the price of said rolling stock as set forth in said agreement was reasonable, and that the same ought to be acquired as part of the permanent equipment of "said division" of said road; and said order further purported to adjudge and decree that "the receiver" pay said petitioners as rent and interest of said rolling stock $21,252.70 and the further sum of $78,030 balance, in full of said purchase-money for said rolling stock, as operating expenses of the said division, and that said amounts, with six per cent. interest, be a first lien on all the property of the Toledo, Cincinnati and St. Louis Railroad Co., and especially upon said Southeastern Division thereof, and that any balance thereof remaining unpaid at the time of sale of said railroad be first paid out of the proceeds thereof.

And your petitioner further showeth that on said 22nd day of December a certain other order was entered in this cause by procurement of said petitioners upon the same petition similar in all respects to said first-mentioned order, except that the locomotive was one locomotive only (No. 63), and purporting to find due therefor $2,361.30 for rent and interest and $8,670, balance of purchase-money, and making said sums a first lien on the property of said Cincinnati Northern Railway Co.

And your petitioner further showeth that both said orders were without the consent or knowledge of this petitioner, complainant in said cause, and were ordered to be entered by the court upon a misapprehension and by inadvertence, the court acting in that behalf upon belief that said orders had been assented to by the complainant in this cause, your petitioner.

But, on the contrary thereof, your petitioner says it had no knowledge whatever that said orders were proposed to be entered, and had no knowledge that the same had been entered until the 26th day of February last, when it first learned the fact from the announcement thereof by the counsel of the said Grant Locomotive Works to the judges of the circuit court of the United States for the 6th and 7th circuits, while sitting at the city of Indianapolis in conference relative to claims for rolling stock alleged to be in possession of the receiver operating the several constituent roads which formed said Toledo, Cincinnati and St. Louis Railroad Co.; and thereupon your petitioner took immediate steps looking to the rescission of said orders, and caused entries to be made by the order of this court on the 7th instant suspending the same until the further order of this court in that behalf.

And your petitioner further says that there are many errors and imperfections in said orders made as aforesaid upon the petition of said Grant Locomotive Works and American Loan and Trust Co., and that the same are and each of them is unjust, illegal, and oppressive. Your petitioner says that the same were not entered upon hearing first had by the court of the matters therein involved, but were entered without any hearing whatever; that the same were not heard upon evidence, but were entered without any competent evidence whatever; that said final orders state that the court was satisfied that the receiver had in his possession the engines therein mentioned, but does not state who the receiver was or of what he was receiver, the fact being, however, that said William J. Craig was not receiver on the first day of August, 1883, and never was receiver of the Toledo, Cincinnati and St. Louis Railroad Co., and the said Dwight was never appointed receiver of any railroad by this court and was not the predecessor of said Craig as receiver; all of which facts are within the knowledge of this court; and your petitioner says that said locomotives ought not to be acquired as part of the permanent equipment of the said Southeastern Division of said road or of the Cincinnati Northern railway, and the first-mortgage bondholders of said two roads do not desire to purchase the same and protest against the same being forced upon them by said intervening petitioners or made a lien upon the property of either of said roads to the prejudice of their rights. Your petitioner showeth that no interest has been paid on said 1st mortgage from the earnings of either of said roads.

And as to said order hereinbefore secondly mentioned your petitioner showeth that the same refers exclusively to the property of the Cincinnati Northern Railway Co., which is not even a party to this case, in which said order was made.

And as to each of said orders your petitioner further showeth

that the findings therein purporting to be made are in many other important particulars untrue in fact, and especially in that price of said locomotives and tenders and the rent thereof were reasonable. On the contrary, your petitioner showeth unto your honors that the same are unreasonable and excessive.

Your petitioner further showeth that it hath no knowledge of the alleged agreement of lease and sale described in the said intervening petition, and therefore denies the same; and your petitioner showeth that it hath no knowledge and therefore denies that the locomotives and tenders described in said intervening petition or any locomotives and tenders were delivered to the said Toledo, Cincinnati and St. Louis Railroad Co. under said alleged agreement or otherwise.

Your petitioner further showeth that it hath no knowledge and therefore denies that said railroad Co. made default in the sums mentioned in said intervening petition or in any other sums, or that said sums or any other sums became or are now due or payable to the said intervening petitioners.

Your petitioner further showeth that it hath no knowledge and therefore denies that "said receiver" ever seized or now retains possession of said locomotives and tenders, or that he refused to surrender the same to said intervening petitioners.

Your petitioner further showeth that it hath no knowledge whether the said intervening petitioners are in truth entitled to the possession of said ten locomotives and tenders, but your petitioner saith that if they are so entitled it makes no objection to their taking such possession.

Your petitioner says that it has no knowledge and therefore denies that the principal of said one hundred and five thousand dollars is now due and payable, or that said Grant Locomotive Works is the owner of said bonds.

Your petitioner further showeth that it hath no knowledge and therefore denies that there are due from the "said receiver" the sums mentioned in said intervening petition, or any other sums whatsoever.

Your petitioner further showeth that it has no knowledge and therefore denies that the said locomotives and tenders have been depreciated in value by use in the sum mentioned in the said intervening petition or in any other sum.

Wherefore your petitioner prays that this petition may be taken as well for an answer to the said intervening petition of said Grant Locomotive Works and said American Loan and Trust Co. as for a petition for rehearing or review of said intervening petition and of the said orders so erroneously and inadvertently as aforesaid made thereunder; and your petitioner further prays that the said orders be set aside, annulled, and held for naught; that the intervening petition may be hence dismissed; that the said Grant Locomotive Works and the said American Loan and Trust Co. may be decreed to pay to your petitioner its reasonable costs and expenses in this behalf incurred, and that your petitioner may be decreed to have

such other and further relief as shall be in conformity to the course of equity and to good conscience.

HOADLY, JOHNSON AND COLSTON,
Solicitors for Complainant.

UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, }

Edward Colston, being by me first duly sworn, says that he is one of the solicitors of The Central Trust Co. of New York, the complainant in this cause, and that he has read the foregoing petition and is familiar with the contents thereof, and that the matters and things therein stated are true, except where stated on information and belief, and those he believes to be true.

EDWARD COLSTON.

Sworn to before me and subscribed in my presence this 13th day of March, A. D. 1884.

JNO. F. JOCKEL,
Notary Public, Hamilton County, Ohio. [SEAL.]

(Record, p. 79 to p. 81, incl.)

And afterwards, to wit, on the 10th day of April, A. D. 1884, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal V, page 363.

This day this cause came on further to be heard upon the intervening joint petition of the American Loan and Trust Co. and of the Grant Locomotive Works, filed in this cause October 27, 1883, and the court, being fully advised in the premises, does order, adjudge, and decree as follows, to wit:

The court finds that the two decrees herein made and entered upon said intervening petition on the 22nd day of December, A. D. 1883, were entered without notice to the complainant herein and without proof; that the said decrees are erroneous and unjust to the bondholders for whom the said complainant herein is trustee; that said decrees are unauthorized by the pleadings and are based upon a misrecital of the facts, as evidenced by the record in this cause; that said decrees were authorized by the court without examination on the erroneous belief, entertained at the time, that all the parties in interest had assented to said decrees, and that the parties adversely interested acquired no knowledge of the allowance of said decrees until about the 24th day of February, A. D. 1884, and after the adjournment of the term of court at which the same were entered.

And thereupon it is by the court, of its own motion, ordered, adjudged, and decreed that the said decrees be, and they are hereby, annulled, set aside, and held for naught.

And the court, coming now to determine the questions arising upon the said intervening petition of the American Loan and Trust

Co. and of the Grant Locomotive Works, does order, adjudge, and decree as follows, viz:

That the relief prayed for in said intervening petition be, and it is hereby, denied, except as hereinafter provided.

And the court does further find that the said petitioners are entitled to fair compensation for the use of said rolling stock described in his said intervening petition by the receiver in this cause upon the railroad of the defendant, The Toledo, Delphos and Burlington Railroad Co., commonly known as the Southeastern Division of the Toledo, Cincinnati, and St. Louis R. R., and for any deterioration by reason of such use.

But the court defers the determination of the amount of such compensation until the coming in of the report thereon of the master appointed in this cause on the 5th day of April, A. D. 1884.

And the court does further find that the said petitioners are entitled to take and repossess themselves of his said rolling stock wherever the same may be found in the possession of the receiver appointed in this cause or of the receiver appointed in causes numbered 3554, 3576, 3577, and 3579 in this court.

And leave is hereby granted to said petitioner to apply at any time to this court for any additional orders that may be necessary in that behalf.

And the said American Loan and Trust Co. and the Grant Locomotive Works applied for leave to answer the petition of the complainant, The Central Trust Co., filed March 15, 1884, and to support their answer by affidavits or other proof, and the court, entertaining the opinion that the answer and affidavits proposed are by force of the foregoing decree rendered unnecessary, declined to grant the leave asked and refused to permit an answer to said petition for rehearing on affidavit or other proof in support thereof to be filed.

And thereupon the intervening petitioners, The American Loan and Trust Co. and The Grant Locomotive Works, in open court prayed on appeal from the foregoing decree, which is thereupon disallowed by the court.

(Record, p. 258 to p. 264, incl.)

And afterwards, to wit, on the 28th day of June, A. D. 1884, the following report of special master was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Report of Special Master Commissioner.

Circuit Court of the United States, Southern District of Ohio, Western Division.

THE CENTRAL TRUST CO. OF NEW YORK, a Corporation, as Trustee, Complainant,
vs.
THE TOLEDO, DELPHOS AND BURLINGTON R. R. Co. *et al.*, Defendants.
3579.

To the honorable court:

The undersigned, the special master commissioner appointed herein in charge of the duty of making sale herein according to the direction of a decree made in the above-entitled cause in said circuit court of the United States on the 31st day of March last, respectfully reports to the court as follows:

Pursuant to said decree, notice of the time, place, and terms of sale was given by publication of said notice as follows: In the Cincinnati Commercial Gazette, a daily newspaper of general circulation printed and published in the city of Cincinnati, in the State of Ohio, on the days following, namely, on April 23, April 30, May 7, May 14, May 21, May 28, June 4, June 11, June 18, June 25, 1884, and in the New York Tribune, a daily newspaper of general circulation printed and published in the city of New York, in the State of New York, on the days following, namely, the same dates as the Cincinnati Commercial Gazette.

The publication of said notice in each of said newspapers began at least 60 days prior to the time of sale, and said notice was to the effect that said sale would take place at the front door of the court-house of the circuit court of the United States for the southern district of Ohio, in the city of Cincinnati, Ohio, on Saturday, the 28th day of June, A. D. 1884, at 11 o'clock a. m. of said day; copy of said notices as published in said newspapers is filed herewith and made part of this report. After having given said notice in the manner aforesaid, in pursuance thereto and in obedience to said decree of said court in that behalf, the undersigned special master commissioner attended in person at said city of Cincinnati, county of Hamilton, and State of Ohio, at the front door of the court-house of said circuit court, upon the day appointed and at the hour named in said notice of sale, and in the presence of a number of persons attending said sale and having the opportunity to bid thereat, did then and there, at public outcry, openly offer and expose to sale, upon the terms and conditions of said decree of said court and said notice of sale, as an entirety, all and singular the entire railroad of the Toledo, Delphos and Burlington Railroad Co., now known as Southeastern Division of the Toledo, Cincinnati and St. Louis Railroad Co., with all its property, real and personal, and its franchises, rights, and privileges, including its rolling stock, equipment, and all other property embraced or referred to in said decree, which notice of sale

was read by said special master commissioner at the time and in the hearing of the persons so assembled as follows, to wit:

Special Master Commissioner's Sale of the Toledo, Delphos and Burlington Railroad, Commonly Known as the Southeastern Division of the Toledo, Cincinnati and St. Louis Railroad.

Circuit Court of the United States, Western Division of the Southern District of Ohio. Case # 3578. In Chancery..

Pursuant to the command of an order for sale from the circuit court of the United States, western division of the southern district of Ohio, and to me directed, made in case # 3578, wherein The Central Trust Co. of New York, a corporation, as trustee, &c., is complainant and The Toledo, Cincinnati and St. Louis Railroad Co., Grenville D. Braman, and others are respondents, I will offer at public sale, at the front door of the court-house of said United States court, in the city of Cincinnati, county of Hamilton, and State of Ohio, at 11 o'clock a. m., on Saturday, the 28th day of June, A. D. 1884, the following-described property, to —:

All and singular the line of railroad of the said Toledo, Delphos and Burlington Railroad Co., commonly known as the Southeastern Division of the Toledo, Cincinnati and St. Louis railroad, as the same is constructed between the crossing of Third St., of Dayton, Ohio, being the western terminus of said division, and thence with the line of said road through the counties of Montgomery, Greene, Fayette, Ross, Vinton, and Jackson, and thence on its branch line through the counties of Jackson, Gallia, and Lawrence to a connection with the Ironton and Huntington railroad at or near the city of Ironton, Lawrence Co., O., being about 180 miles in length, together with all and singular the right of way, road-bed, made or to be made, tracks, laid or to be laid, between the terminal points aforesaid, together with all and singular the station, depot grounds, rails, structures, bridges, sidings, engine-houses, engines, cars, and machine shops, buildings, erections in any way appertaining unto said described line of railroad between said points, together with all machinery, supplies, tools, and fixtures which are now or may hereafter and up to the time of sale herein be held, owned, or acquired by the said Toledo, Delphos and Burlington Railroad Company for use in connection with its line of railroad aforesaid between said points, and all its depot grounds, yards, siding, turnout, shed, machine shops, leasehold rights which are or may be owned by said last-mentioned railroad Co. in connection with its line of railroad aforesaid between said points, together with all and singular the powers and franchises thereto belonging, and the tolls, incomes, and revenue to be levied or derived therefrom, all of which said property is fully described in the original deed or indenture of trust and mortgage from the said Toledo, Delphos and Burlington Railroad Co. as consolidated to said The Central Trust Co. of New York, a corporation, as trustee, &c., dated May 16, A. D. 1881, and recorded

in said counties of Montgomery, Greene, Fayette, Ross, Vinton, Jackson, Gallia, and Lawrence, State of Ohio. Under this order for sale I will not sell any part of the railroad or property of the Iron Railroad Co. which has been ordered to be sold in case #3579 of this court, except such rights as the defendant herein, The Toledo, Delphos and Burlington Railroad Co., may have acquired in the road-bed of said Iron Railroad Co., entered into on the 30th day of July, A. D. 1881, between the said Iron R. R. Co. and The Toledo, Delphos and Burlington R. R. Co., defendant herein, prior to the consolidation of the said Iron Railroad Co. with the said Toledo, Delphos and Burlington R. R. Co.

Terms of sale.

No bid will be accepted by me from any bidder until such bidder first places in my hands or deposits with me, as a pledge that he will make good his bid in case of its acceptance by the court, the sum of $20,000 in money or the said 1st-mortgage bonds of the said defendant herein, The Toledo, Delphos and Burlington Railroad Co., of date May 16, A. D. 1881, to the amount of $50,000, exclusive of interest; also of the purchase price so bid not less than the sum of $20,000 shall be paid in cash; and also such further portions — purchase price shall be paid in cash, as this court may in this case from time to time direct, in order to meet other claims which this court may adjudge in this case to be prior in equity to the said 1st mortgage, the court reserving the right to resell in this case said premises and property upon failure to comply within 20 days with any order of this court in that regard. The balance of the purchase price not required to be paid in cash may be paid either in cash or the purchaser at said sale shall have the right to satisfy his bid in whole or in part by paying over and surrendering such of said 1st-mortgage bonds of said defendant herein, The Toledo, Delphos and Burlington Railroad Co., of date May 16, 1881, and overdue and unpaid coupons belonging thereto as this court shall hereafter declare to have been properly sold and are a valid obligations in the hands of the present holders at such price or value as would be equivalent to the distributive amounts that the holders thereof would be entitled to receive in case the whole amount of the bid were paid in cash.

Also, as to so much of said purchase price as is hereby required to be paid in cash, the same shall be payable in cash or by the surrender of certificates of indebtedness issued by William J. Craig, as receiver of and while operating said Toledo, Delphos and Burlington railroad under the order of this court in this cause.

SIMEON HARRIS,
Special Master Com., 14 *Masonic Temple, Cincinnati, Ohio.*

Butler, Stillman and Hubbard, New York; Hoadley, Johnson and Colston, J. B. Foraker, and Ramsey & Matthews, Cincinnati, Ohio; Henry D. Hyde, Boston, Mass.; Wilson and Jones, Springfield, Ill.; John L. High, C. B. Roys and C. M. Da Costa, Chicago, Ill.; John A. McMahon and Nevin & Kumler, Dayton, O., counsel.

And thereupon N. H. Mansfield, James M. Prendergast, Edwin Moray, Wm. A. Haskell, of Boston; John F. Kimball, of Lowell, Mass., and Austen Corbin, of New York, as trustee-, did bid for said property the sum of five hundred thousand dollars, and before said bid was accepted said bidder placed on deposit with said special master commissioner, as a pledge that the bid so made would be made good in case of acceptance, the following fifty-one thousand dollars 1st-mortgage bonds of said Toledo, Delphos and Burlington Railroad Co., of date May 16, A. D. 1881, exclusive of interest, which said bonds are now held by said special master commissioner subject to the order of this court; and, no one bidding more and that being the highest and best bid, it was thereupon then and there, at the hour of 11 o'clock a. m. of said day, openly and publicly struck off and sold to said N. B. Mansfield, James M. Prendergast, Edwin Moray, Wm. A. Haskell, of Boston; John F. Kimball, of Lowell, Mass., and Austen Corbin, of New York, as trustees, for the sum of $500,000.00, and said special master com. submits his doings herein for the consideration *of* the further order of this court.

Respectfully submitted.

SIMEON HARRIS,
Special Master Com., S. E. Div.

Cincinnati, Ohio, June 28, 1884.

(Record, p. 267 to p. 270, incl.)

And afterwards, to wit, on the 18th day of July, A. D. 1884, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal V, p. 445.

And now, this day, this cause came on further to be heard upon the application of the complainant herein, The Central Trust Co. of New York, to confirm the sale made herein on the 28th day of June, A. D. 1884, by Simeon Harris, Esq., special master commissioner appointed for that purpose by the former order of this court; and upon producing the report of said special master commissioner of said sale, and it appearing that notice of the hearing of said application for confirmation of said sale has been given in accordance with the former order of this court in that behalf, and the court having fully examined the report of said special master commissioner of said sale and his doings in pursuance of said decree of sale, and finding the same correct and in all respects in conformity to law and to the former orders of this court, and that the amount bid at said sale as reported by said special master commissioner in said report of said sale, to wit, the sum of five hundred thousand dollars, was the highest and best bid for the premises and property, rights and franchises, so ordered to be sold by him at said time, it is now therefore ordered, adjudged, and decreed that said sale be, and the same hereby is, ratified and confirmed and all the proceedings of said special master commissioner in that regard are hereby approved and confirmed.

And it is further ordered and directed that upon the entering of this decree the said purchasers at said sale pay into this court the sum of twenty thousand dollars, being the amount ordered by this court in the decree of sale hereinbefore entered to be paid in cash at this time, and thereupon the said Simeon Harris, master commissioner, shall deliver to said purchasers the bonds of the said Toledo, Delphos and Burlington Railroad Co., of date May 16, 1881, placed in his hands by said purchasers as a pledge that they will make good their said bid in case the same should be accepted by the court in this cause, and upon such payment being made the said Simeon Harris, Esq., special master commissioner herein, shall, by proper instrument in writing, convey in fee simple to said purchasers, namely, N. B. Mansfield, James M. Prendergast, Edwin Morey, William A. Haskell, John F. Kimball, and Austin Corbin, as trustee-, all and singular the premises and property, rights and franchises, of The Toledo, Delphos and Burlington Railroad Co., defendant herein, as the same are heretofore described in said decree of sale heretofore entered in this cause by this court, and all the right, title, and interest, at law or in equity, of all the parties to this cause in or to the same or any part thereof; and the said purchasers are hereby subrogated to all the rights of all lienholders parties to this suit in or to said premises and property, rights and franchises, including any rights as the same may appear of any of the parties to this suit under and by virtue of that certain contract, of date July 30, 1881, between The Toledo, Delphos — Railroad Co., defendant herein, and the Iron Railroad Co., being the same referred to in the decree of sale in this case.

And it is further ordered, adjudged, and decreed that upon the execution and delivery of said deed all parties to this case and the receiver heretofore appointed herein shall, and they are hereby directed and required to, surrender and deliver possession of all and singular the premises and property, rights and franchises, aforesaid so sold as aforesaid to the said purchasers or their assigns, and, further, that said receiver shall thereupon file herein his final report of his doings as receiver in this cause.

And it is further hereby ordered, adjudged, and decreed that this decree of confirmation of the sale of the premises and property, rights and franchises, aforesaid is subject to the terms and provisions of the decree of sale heretofore entered in this case, whereby it is provided that of the purchase price so bid at said sale such further portions thereof, in addition to the said sum of twenty thousand dollars heretofore mentioned, shall be paid in — case as this court might from time to time in this case direct in order to meet other claims which this court has or hereafter may adjudge in this case to be prior in equity to said first mortgage, and whereby this court did reserve the right to resell in this case said premises and property, rights and franchises, upon the failure to comply within twenty days with any order of this court in that regard, and the right, title, and interest of the said purchasers in and to the premise- and property, rights and franchises, aforesaid by virtue of said sale and of this confirmation thereof and of the deed to be made in pur-

suance hereof shall be deemed to be acquired and subject to said provision.

And it is now further ordered that out of the sum of twenty thousand dollars hereby ordered to be paid into court upon the entering of this decree there be paid the costs of this case to this date, to be taxed by the clerk, amounting to — dollars, including a fee of — dollars to Simon Harris, Esq., for his services as special master commissioner in making said sale, and the further sum of — dollars for the costs of advertising said sale, and to Jacob D. Cox, Esq., the sum of four hundred and eighty dollars, being the amount which in the opinion of the court ought to be charged in this case for his services to this date rendered as special master commissioner under and in pursuance of the order of reference to him made in this and other causes in this court on the 5th day of April, A. D. 1884, and also two-fifths of all like costs and charges taxed in the case of the same complainant against The Iron Railroad Co. and others, # 3579, in this court, and proper receipts for all said payments shall be taken and filed by the clerk in said causes respectively.

(Record, p. 337.)

And afterwards, to wit, on the 8th day of February, A. D. 1887, an entry was made upon the journal of said court clothed in the words and figures following, to wit:

Journal X, p. 43.

This day came the said petitioner and under leave of court files its petition herein; and thereupon, on the motion of the said petitioner, by Bluford Wilson, its solicitor, it is ordered by the court that the said complainant and the purchasers of the said railroad property at the foreclosure sale thereof heretofore made appear before this court on Tuesday, the 5th day of April, 1887, at 11 o'clock a. m., and show cause, if any they have or know, why the relief prayed by the said petitioner should not be granted.

(Record, p. 338 to p. 368.)

And afterwards, to wit, on the 8th day of February, A. D. 1887, the following petition of the Grant Locomotive Works was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Petition of the Grant Loco. Works.

In the United States Circuit Court, Southern District of Ohio, Western Division.

THE CENTRAL TRUST COMPANY OF NEW YORK, Complainant, *vs.* THE TOLEDO, DELPHOS AND BURLINGTON RAILROAD COMPANY, The Toledo, Cincinnati and St. Louis Railroad Company, and Granville D. Braman, Respondents.	In Chancery. # 3577, 3576, 3579, 3578, 3554.

To the honorable the judges of the circuit court of the United States for the southern district of Ohio (western division):

Your petitioner, The Grant Locomotive Works, respectively shows unto this honorable court as follows:

I. That on August 1, 1882, your petitioner, The Grant Locomotive Works of Paterson, and The Toledo, Cincinnati and St. Louis Railroad Company entered into a contract for the conditional sale or lease to the said railroad company of ten locomotives of the value and agreed price or aggregate rental of $105,000, payable August 1, 1883, $20,000; August 1, 1884, 27,000; August 1, 1885, 27,000; August 1, 1886, 31,000, in all $105,000, together with six per cent. interest, taxes, and insurance premiums, the railroad company as vendee and lessee being bound to keep the locomotives fully repaired.

II. That the said locomotives were duly delivered by your petitioner to the said railroad company, and were used by it in the operation of its railroad up to August 1st, 1883.

III. That on August 1, 1883, one G. D. Braman, a judgment creditor of the said railroad company, filed a creditor's bill in the United States circuit court for the district of Illinois, in the seventh circuit, praying, among other things, for the appointment of a receiver of the property of said railroad company, and alleging that the public interests and the interest of all the owners and creditors of the said company would greatly suffer should its line of railroad cease to be operated, and that the same could not be operated without the continued use thereon of the aforesaid ten locomotives, which the complainant stated he was informed and believed were likely to be withdrawn if overdue payments thereon were not soon made; that to this bill The Central Trust Company of New York, complainant herein, as trustee of the mortgage creditors of said railroad, voluntarily entered its appearance, and it acquiesced in the appointment of the receiver thereunder in accordance with the prayer of the bill.

That thereupon Edwin D. Dwight was appointed receiver by the United States circuit courts in the States of Illinois and Indiana of the property of the Toledo, Cincinnati and St. Louis Railroad Company in those States, and on August 2nd, 1883, under ancillary proceedings in the United States circuit courts in Ohio, the said Dwight

was also appointed receiver of all the property of the said railroad company in the State of Ohio.

That in the orders appointing the said receiver it was, among other things, provided that the receiver should take possession and operate the said railroad and premises described in the said bill of complaint, and should pay all debts due for wages, materials, and supplies incurred in the operation and maintainance of the said property during the six months then last past.

That Dwight, as receiver, entered into possession of all the property in the three States named, and thus took possession of the said ten locomotives, the subject of the conditional sales and leases before mentioned, and thereafter used the said locomotives in the operation of the railroad property.

IV. That default was made on August 1, 1883, in the payment of $20,000 and interest then due under the said contract with your petitioner, The Grant Locomotive Works, and thereupon, under the terms of the said contract, your petitioner became entitled to reclaim the locomotives sold or leased by it.

V. That on or about August 18, 1883, demand was made by your petitioner upon Dwight, as receiver as aforesaid, for the surrender of the said locomotives, but the said Dwight, as receiver, refused to surrender the same, but, as such receiver, then promised the agent of your petitioner that if the said locomotives were left with him he would purchase and pay for them at a valuation equal to the amount of the instalments or rentals remaining unpaid under the said contract.

VI. That on August 25, 1883, your petitioner presented a petition to the United States circuit court in Illinois, praying for an order directing Dwight, as receiver, to surrender the said ten locomotives, or for other relief, in accordance with the agreement of the said re ceiver before alleged.

That formal action upon this petition was postponed owing to a conflict of jurisdiction which had arisen between the judges of the sixth and seventh circuits as to some of the property in the hands of the receiver, but that on or about Sept. 18, 1883, the said Dwight, as receiver, after taking instructions directly from the court which had appointed him, fully ratified and completed the agreement of purchase above alleged, and contracted as such receiver to take the said locomotives and to pay therefor to your petitioner the full contract price, with interest and without discount.

VII. That on Oct. 20, 1883, by an order made in the above-entitled foreclosure suit instituted by the Central Trust Company of New York against the said railroad Co., the said Dwight was removed as receiver of the property of the railroad Co. in the State of Ohio, and W. M. J. Craig was made receiver thereof in the place and stead of the said Dwight, and subsequently the said Craig was likewise made receiver of the said property in Illinois and Indiana in the place and stead of the said Dwight, and that it was further ordered in the U. S. circuit court for the district of Illinois that the receivership already existing under the order heretofore entered in the Braman suit

should be extended over and made to apply to the premises and property sought to be foreclosed.

That the said Craig entered into possession of the said property as receiver on November 1, 1883, and thus took possession of the said locomotives and thereafter used the same in the operation of the railroad property.

That the said locomotives had been by the receiver distributed to the different divisons of the said railroad with the result that some were in use upon the Cincinnati Northern railway and some upon the Dayton and Southeastern Division.

VIII. That in Oct., 1883, your petitioner presented its intervening petition in this cause praying for a surrender of the locomotives or for other relief, and thereupon a rule was granted directing the receiver to answer, and that said answer was subsequently filed by the receiver admitting the contract aforesaid, the receiver's possession of the locomotives, and alleging that the same were necessary to the successful operation by him of the said railroad, and praying the court to make such order as would enable him to retain the possession and use of the said locomotives.

IX. That in and by the petition last aforesaid and the answer thereto and the other proceedings in the cause it then appeared that the said railway company, although it had never paid its bonded interest, had yet been allowed by the mortgage bondholders and their trustees to remain in the possession and management of the railroad property; that the appointment of the said Dwight as receiver, although made at the suit of the said Braman as judgment creditor, was in fact a collusive proceeding procured in the interest of the mortgage bondholders and acquiesced in by their trustee; that the said Dwight, as receiver, had taken possession of the petitioner's property in the same interest, and, notwithstanding the default in the agreement for the conditional sale and lease thereof, had refused to surrender possession thereof when demanded by your petitioner, upon the ground that his retention thereof was essential and necessary to the operation of the railroad property; that the appointment of the said Craig as receiver in the place and stead of the said Dwight was made upon the motion of the said mortgage trustees and at their suit, and that upon a like demand for the return of your petitioner's locomotives the said Craig refused to surrender the same for the reason that the same were necessary to the operation of the said railroad; that repeated applications have been made on behalf of your petitioner, both to the receivers and also to the courts appointing the same, for the return of the locomotives or for the payment of the purchase price thereof; that the said locomotives *was* essential to the operation of the railroad property, and they retained possession and use of said locomotives in the interest of the mortgage bondholders and against the will and demand of your petitioner; that the said receivers never claimed any right to retain the said locomotives except upon condition of ultimate full payment to your petitioner of their value; that the said receiver Dwight had in term- agreed as receiver to purchase the said locomotives and to pay the full contract price thereof, together with in-

terest and without discount; that the said receiver Craig, in his answer aforesaid, admitted the facts stated by your petitioner and prayed the court to make such orders as would enable him to retain possession and use of said locomotives and at the same time fully protect the right of your petitioner; that the said Craig, as receiver, afterwards, on Dec. 17, 1883, agreed to the valuation fixed in the contracts, and by his counsel consented to the entry of the decrees securing to your petitioner the payment of the same, with interest, and that it had been announced by the judge presiding in this court, on Nov. 23, 1883, in open court and in the presence of the solicitor of the mortgage trustees, who made no objection to the same, that your petitioner's locomotives aforesaid should be paid for either by the issue of receiver's certificates or in any speedier way practicable.

X. That on Dec. 22, 1883, decrees were entered herein in the matter of the said intervening petition, ordering, adjudging, and decreeing that the receiver pay to your petitioner, as rentals and in full for all claims for rentals, interest, and repairs and for purchase-money, the aggregate sum of one hundred and ten thousand three hundred and fourteen ($110,314) dollars, and apportioning such payments between the separate divisions of the said railroads according to the distribution of the said ten locomotives.

Copies of the said decrees are hereto annexed, marked Schedules "A" and "B." The said decrees were entered with the consent of the receiver's solicitors and with the knowledge of the solicitors of The Central Trust Co., complainant in the principal cause.

The said decrees were so entered at the October term of this court for the year 1883.

XI. That the February term of this court for the year 1884 passed without further action herein in the matter of the said intervening petition.

XII. That by orders directed to be entered herein by Judge Baxter of his own motion on the 10th day of April, 1884, in the April term of this court for the year 1884, copies of which orders are hereto annexed, marked Schedule C, it was directed that the said decrees, Schedules A and B, should be vacated.

That the said order, Schedule C, was based upon a mistake of the facts as presented by the record in this cause; and your petitioner insists that notwithstanding the recitals in the said order, Schedule C, the said decrees, Schedules A and B, were entered after an understanding with and notice, both actual and constructive, to the solicitors of the complainant, the mortgage trustee; and, further, that they were abundantly sustained by the sworn answer of the receiver, by the correspondence of record, and by the uncontradicted facts as they existed and as they were stated upon the face of the decrees; that they were entered with the written consent and approval of the receiver; that they were in accordance with the contracts and agreements made both with the company and with the receivers under the actual or implied assent of the mortgage bondholders; that they were authorized by the pleadings and correctly recited the facts thereof; that they were presented to the court nearly two weeks prior to their entry, and that the solicitors for the receiver

and the complainant, the mortgage trustee, had notice thereof and opportunity to examine and correct the same; that they followed the views which had been expressed by the court in the presence of one of the solicitors for the complainant, the mortgage trustee, without objection upon his part; that after entry they were brought to the notice of all the parties to the cause and remained without objection for more than a reasonable time, and that the said decrees were, under the circumstances, entirely fair and just to the mortgage bondholders represented by the complainant, trustee, and to all interested in the cause.

XIII. That your petitioner is advised and believes that the said order, Schedule C, entered herein on the 10th day of April, 1884, purporting to vacate the decrees entered on the 22nd day of Dec., 1883, were not only based upon an erroneous view of the facts, but, moreover, were beyond the power of the court to make, and were of no effect and void, and your petitioner has at all times protested against the same.

Not only was the said order, Schedule C, entered by the court of it own motion at the said April term and after the expiration of the October term of 1883, at which the decrees, Schedules A and B, were entered, but also after the intervention and expiration of the February term of this court for the year 1884; that, moreover, the said order, Schedule C, was entered without proof, without change in petition of your petitioner or of the receiver's answer thereto, or without other change in the pleadings in the cause and with the record standing unchanged from its position on Dec. 22, 1883, when the said decrees, Schedules A and B, were entered.

XIV. That by virtue of an order made herein April 5, 1885, it was referred to Hon. Jacob D. Cox, as master, directing him to ascertain the amount of the leased equipment upon the raid railroad, the use made of the same, the necessity for its continued use, and what would be a fair and just compensation for the past and future use thereof, and also what, if any, deterioration the said equipment had suffered since it came to the hands of the receiver; that your petitioner, although protesting in writing that the said order and the proceedings thereon should not affect his claim herein, did, thus protesting, attend before the said master and make proof as to the use made by the receiver of said ten locomotives and as to their value and condition; that the said master made a report unto this court as to all the matters referred to him, and therein reported that the said 10 locomotives had been used by the said receivers, and that their continued use was necessary in the operation of the property; that the said master further reported that there should be allowed and paid to your petitioner for the said locomotives the sum of $160 per month rental from the 1st day of August, 1883, and reporting also the rent due for the six months prior to said date, at same rate, with an allowance for damages, and no more, instead of the sum of $110,314, which this court had, on Dec. 22, 1883, decreed should be allowed and paid to your petitioner for the said locomotives.

That your petitioner duly protested against any confirmation of the report of the said master so far as the same affected his claim,

but your petitioner is informed and believes that on the 12th day of November, 1885, an order was entered confirming the said report generally, but reducing the monthly rental to $115 per month and disallowing all rentals and repairs prior to Nov. 1, 1883, copy of which order is hereunto annexed, marked Schedule "D."

That your petitioner is, however, advised and believes that the entry of said order was without effect upon your petitioner's claim herein, the same having been adjudicated by the said decrees entered on Dec. 22, 1883, and the said decrees never having been effectively vacated or altered.

XV. That the said 10 locomotives at all times subsequent to the appointment of the receivers aforesaid and until the sale of the said railway property and its transfer to the purchasers thereof, July 22, 1884, remained in the possession and use of the said receivers and formed an essential part of the equipment employed by the receivers in the operation of the said railroad.

That no sum of money whatever has ever been paid to your petitioner by either the said receivers for such use of the said locomotives or by way of compensation for the deterioration suffered by the said locomotives during such use.

That the said locomotives suffered very serious deterioration in the said use; that the proper and usual repairs were not made to the same, so that the said locomotives were, on the 22nd day of July, 1884, by reason of the said deterioration and want of repair alone, of very much less value than they were when the return thereof was demanded by your petitioner from the said receivers.

That the market value of locomotives of the class to which the said ten locomotives belong very seriously depreciated since your petitioner demanded from the receivers the return thereof and prior to July 22, 1884, and that your petitioner could not at said last-named date obtain for the said locomotives, had they been in good order, more than thirty per cent. of the sum of money which your petitioner could have obtained therefor had the receivers returned the said locomotives to it upon its demand.

That after July 22, 1884, and to this date the purchaser retained said locomotives in use, but upon special agreement as to rental, and such was to be without prejudice to the legal rights of the parties pending the final determination of the questions herein.

XVI. That your petitioner is advised and believes that it is entitled to be paid and allowed to it by the said decrees entered Dec. 22, 1883, and that the same should be ordered paid to your petitioner out of the net income, if any there be, of the receivership, and in default thereof, then out of the proceeds of the sale of the *corpus* of the railroad property.

Wherefore your petitioner prays that it may be ordered and decreed that the said decrees entered herein on the 22nd day of Dec., 1883, are still valid and effectual decrees, adjudicating finally the said rights of your petitioner herein, and that the orders entered herein on the tenth day of April, 1884, purporting to vacate the said decrees, and the order entered herein on the 5th day of April, 1884, so far as the same can be considered to refer to a master the

matters of your petitioners claim, and any order herein confirming any report of the said master may, and each of the same may, be ordered and decreed to be without effect upon the rights of your petitioner, and that it be ordered and decreed that your petitioner shall be paid and allowed for its said equipment the sum of $110,314, together with interest from the said 22nd day of December, 1883, to be paid out of the net income of the receivership, if any, so far as the same shall suffice, and that it be further ordered, adjudged, and decreed that any balance of your petitioner's said claim so ascertained not so paid shall be paid out of the proceeds of the sale of the mortgaged property in the principal cause herein, or that your petitioner may have such other or further relief as to your honors may seem meet in the premises; and your petitioner will ever pray.

GRANT LOCOMOTIVE WORKS, *Petitioner*,
By R. S. GRANT, *Pres'd.*

BLUFORD WILSON, *Solicitor.*

UNITED STATES OF AMERICA,
Southern District of New York, } ss:

R. S. Grant, being duly sworn, on his oath deposes and says that he is the president of the Grant Locomotive Works, the petitioner above named; that the facts set forth in the foregoing petition, so far as they purport to be stated as of his own knowledge, are true, and so far as they purport to be stated upon information and belief he believes to be true.

R. S. GRANT.

Subscribed and sworn to before me this 5th day of Feb., 1887.
CARSTEN WENDT,
Notary Public, Kings County. [SEAL.]

Certf. filed in New York Co.

SCHEDULE "A."

THE UNITED STATES OF AMERICA,
Western Division of the Southern District of Ohio, } ss:

At a stated term of the circuit court of the western division of the southern district of Ohio, in the 6th judicial circuit of the United States of America, begun and had in the court-rooms, at the city of Cincinnati, O., in said district, on the first Tuesday of October, being the second day of that month, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States of America the one hundred and eighth—present, the Hon. Geo. R. Sage—on Saturday, the 22nd day of December, 1883, among the proceedings had were the following, to wit:

THE CENTRAL TRUST CO. OF NEW YORK, Complainant, *against* THE CINCINNATI NORTHERN RAILWAY CO. *et al.* } In Chancery. # 3578.

In the matter of the intervening petition of the Grant Locomotive Works and the American Loan and Trust Co.

The said cause came on to be heard upon the petition and the answer of the receiver thereto and upon the evidence submitted on behalf of said petitioners.

And it appearing to the satisfaction of the court that the receiver has in his possession Grant locomotive # 63 and is using the same in the operation of the said Cincinnati Northern Railway Co., between Cincinnati and Dayton, Ohio, and that the said locomotive is one of the ten covered by the agreement of lease set out in said petition, and was acquired by the Toledo, Cincinnati and St. Louis Railroad Co., one of the defendants, under the terms of said agreement, and was so held at the date of the appointment of the receiver herein;

And it further appearing that the present receiver or his predecessor took the said locomotive, with its tender, into his possession as such receiver on the first day of August last, and has had the same without having made any payment on account of rental, as provided in said indenture of lease, or other compensation for the use thereof:

And it further appearing that the said locomotive is, in the judgment of the receiver, necessary to the proper operation of said railway and should be acquired as part of its permanent equipment, and that the petitioners are willing, upon receipt of the contract price or upon being adequately secured therein, to transfer the title of the same to the receiver;

And the matter being fully heard by the court, and upon due deliberation thereon, it is hereby ordered, adjudged, and decreed that the receiver pay to the said petitioner as rental for said locomotive and tender, and in full for all claims for rental, interest, and repairs down to the first day of Dec., 1883, the sum of $2,361.30, the same being the amount due to said date under the terms of said lease.

And the further sum of $8,670, balance in full as purchase-money for said locomotive and tender.

And it is further ordered that the receiver pay said several amounts, as part of the operating expenses of the said railway, out of any money not appropriated for the payment of current labor, supplies, and taxes.

And it is further ordered and decreed that the said several amounts, with interest thereon, at the rate of six per cent., from the 1st day of Dec., 1883, shall be a charge upon the earnings, income, and all the property of the said Cincinnati Northern Railway Co. as ahead of the first mortgage or other bonded debt of said company, and any balance of said several amounts remaining unpaid at the date of the foreclosure and sale of the said railway shall be a first lien thereon and the said sale shall be made subject thereto.

THE UNITED STATES OF AMERICA,
Western Division of the Southern District of Ohio, } ss:

I, B. R. Cowen, clerk of the circuit court of the United States within and for the division and district aforesaid, do hereby certify that the foregoing entry is truly taken and correctly copied from the journal of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Cincinnati, this 24th day of January, A. D. 1887.

B. R. COWEN, *Clerk,*
[SEAL.] By R. C. GEORGI, *Deputy.*

SCHEDULE B.

THE UNITED STATES OF AMERICA,
Western Division of the Southern District of Ohio, } ss:

At a stated term of the circuit court of the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms, at the city of Cincinnati, O., in said district, on the first Tuesday of October, being the second day of that month, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States of America the one hundred and eighth—present, the Hon. Geo. R. Sage—on Saturday the 22nd day of Dec., 1883, among the proceedings had were the following, to wit:

THE CENTRAL TRUST CO. OF NEW YORK
against
THE TOLEDO, CINCINNATI AND ST. LOUIS Railroad Co. (Dayton and Southeastern Division) *et al.*, Defendants. } In Chancery. # 3578.

In the matter of the intervening petition of the Grant Locomotive Works and the American Loan and Trust Co.

The said cause came on to be heard upon the petition and the answer of the receiver thereto and upon the evidence submitted on behalf of said petitioners.

And it appearing to the satisfaction of the court that the receiver has in his possesion Grant locomotives # 57 to 62, inclusive, and 64 to 66, inclusive, with tenders, and is using the same in the operation of the said Southeastern Division of the defendant company's railroad between Dayton and —, Ohio, and that the said locomotives are nine of the ten covered by the agreement of lease set out in said petition, and were acquired by said defendant, The Toledo, Cincinnati and St. Louis Railroad Co., under the terms of said agreement, and were so held at the date of the appointment of the receiver herein;

And it further appearing that the present receiver or his predecessor took the said locomotives into his possession as such receiver

on the first day of August last, and has had the same in continuous use and possession since that date without having made any payment on account of the rental, as provided in said indenture of lease, or other compensation for the use thereof;

And it further appearing that the said locomotives are, in the judgment of the receiver, necessary to the proper operation of the said division of said railway, and should be acquired as part of its permanent equipment, and that the value of said locomotives and tenders as fixed in said agreement of lease is reasonable, and that the petitioners are willing, upon the receipt of the contract price or upon being adequately secured therein, to transfer the title of the same to the receiver;

And the matter being fully heard by the court, and upon due deliberation thereon, it is ordered, adjudged, and decreed that the receiver pay to the said petitioners as rental for said locomotives and tenders, and in full for all claims for rental, interest, and repairs down to the first day of Dec., 1883, the sum of $21,252.70, the same being the amount due to said date under the terms of said lease, and the further sum of $78,030, balance in full as purchase-money for said locomotives and tenders.

And it is further ordered that the receiver pay said several amounts, as part of the operating expenses of the said Southeastern Division, out of any money not appropriated for the payment of current labor, supplies, or taxes.

And it is further ordered and decreed that the said several amounts, with interest thereon, at the rate of six per cent., from the 1st day of December, 1883, shall be a charge upon the income, earnings, and all the property of the said Toledo, Cincinnati and St. Louis railroad, and especially of said Southeastern Division, prior to the first mortgage or other bonded debt of said railroad or said division thereof, and any balance of said several amounts remaining unpaid at the date of the foreclosure and sale of the said railroad or said division shall be a first lien thereon and the said sale shall be made subject thereto.

THE UNITED STATES OF AMERICA,
Western Division of the Southern District of Ohio, } ss:

I, B. R. Cowen, clerk of the circuit court of the United States within and for the division and district aforesaid, do hereby certify that the foregoing entry is truly taken and correctly copied from the journal of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Cincinnati, this 24th day of January, A. D. 1887.

B. R. COWEN, *Clerk,*
[SEAL.] By R. C. GEORGI, *Deputy.*

SCHEDULE C.

THE UNITED STATES OF AMERICA,
Western Division of the Southern District of Ohio, } ss:

At a stated term of the circuit court of the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms, at the city of Cincinnati, O., in said district, on the first Tuesday of April, being the first day of that month, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and eighth—present, the Hon. John Baxter, judge—on Thursday, the 10th day of April, 1884, among the proceedings had were the following, to wit:

THE CENTRAL TRUST CO. OF NEW YORK, &c.,
against
THE TOLEDO, DELPHOS AND BURLINGTON RAILROAD CO. *et al.* } # 3578. In Chancery.

This day this cause came on further to be heard upon the intervening joint petition of the American Loan and Trust Co. and of the Grant Locomotive Works, filed in this cause on the 27th day of October, A. D. 1883, and the court, being fully advised in the premises, does order, adjudge, and decree as follows, viz:

The court finds that the two decrees herein made and entered upon said petition on the 22nd day of Dec., A. D. 1883, were entered without notice to the complainant herein and without proof; that the said decrees are erroneous and unjust to the bondholders for whom the said complainant is trustee, and are unauthorized by the pleadings, and are based upon a misrecital of the facts as evidenced by the record in this cause; that said decrees were authorized by the court without examination, in the erroneous belief, entertained at the time, that all the parties in interest had assented to said decrees, and that the parties adversely interested acquired no knowledge of the allowance of said decrees until about the 24th day of Feb., A. D. 1884, and after the adjournment of the term of court at which the same were entered, and thereupon it is by the court, of its own motion, adjudged, ordered, and decreed that the said decrees be, and they are hereby, annulled, set aside, and held for naught; and the court, coming now to determine the questions arising upon the said intervening petition of the American Loan and Trust Co. and of the Grant Locomotive Works, does order, adjudge, and decree as follows, viz:

That the relief prayed for in the said intervening petition be, and it is hereby, denied, except as hereinafter provided, and the court does further find that the said petitioners are entitled to fair compensation for the use of said rolling stock described in their said petition by the receiver in this cause upon the railroad of the defendant, The Toledo, Delphos and Burlington Railroad Company, commonly known as the Southeastern Division of the Toledo, Cin-

cinnati and St. Louis railroad, and for any deterioration by reason of such use; but the court defers the determination of the amount of such compensation until the coming in of the report thereon of the master appointed in this cause on the 5th day of April, A. D. 1884; and the court does further find that the said petitioners are entitled to take and repossess themselves of their said rolling stock wherever the same may be found in the possession of the receiver appointed in this cause or of the receiver appointed in causes # 3554, 3576, 3577, or 3579 in this court, and leave is hereby granted to said petitioners to apply at any time to this court for any additional orders that may be necessary in that behalf; and the said American Loan and Trust Co. and Grant Locomotive Works applied for leave to answer the petition of the complainant, The Central Trust Co., filed March 15, 1884, and to support their answer by affidavits or other proof, and the court, entertaining the opinion that the answer and affidavits proposed and by force of the foregoing decree rendered unnecessary, declined to grant the leave asked and refused to permit an answer to said petition for rehearing on affidavits or other proof in support thereof to be filed, and thereupon the intervening petitioners, The American Loan and Trust Company and Grant Locomotive Works in open court prayed for an appeal from the foregoing decree, which is thereupon disallowed by the court.

THE UNITED STATES OF AMERICA,
Western Division of the Southern District of Ohio, } *ss:*

I, William C. Howard, clerk of the circuit court of the United States within and for the division and district aforesaid, do hereby certify that the foregoing entry is truly taken and correctly copied from the journal of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Cincinnati, this 14th day of April, A. D. 1884.

WM. C. HOWARD, *Clerk*,
By R. C. GEORGI, *Deputy*. [SEAL.]

SCHEDULE "D."

THE UNITED STATES OF AMERICA,
Western Division of the Southern District of Ohio, } *ss:*

At a stated term of the circuit court of the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms, at the city of Cincinnati, O., in said district, on the first Tuesday in October, being the sixth day of that month, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States of America the one hundred and tenth.

Present: The Hon. Geo. R. Sage, district judge, and Hon. John Baxter, circuit judge.

THE CENTRAL TRUST CO. OF NEW YORK
against
THE TOLEDO, DELPHOS AND BURLINGTON RAILROAD Co. *et al.*
} In Chancery. # 3578.

At Cincinnati, in said district, on the 12th day of November, A. D. 1885.

Present: Hon. John Baxter and Hon. Geo. R. Sage, judges.

This cause coming on this day to be heard upon the report of Jacob D. Cox, special master herein, filed June 26, 1884, and upon the several exceptions of the several parties in interest to the said report, and upon the testimony, exhibits, and proof accompanying the said report, and thereupon the court having heard the arguments of counsel for the respective parties in interest and being now fully advised in the premises—

The court doth order, adjudge, and decree that the various owners of cars and locomotives embraced in the petitions of intervention and in the report of Jacob D. Cox, special master, do have and recover for the use of their respective cars and locomotives at the rates hereinafter specified from the time William J. Craig, as receiver in this cause, took possession as receiver of the property sold, namely, November 1, 1883, to the 22nd day of July, 1884, at the following rates, namely:

For locomotives, at the rate of	$115	00	per	month
For passenger cars, at the rate of	36	00	"	"
For baggage, express, and caboose cars, at the rate of	18	00	"	"
For box cars, at the rate of	5	00	"	"
For stock cars, at the rate of	8	00	"	"
For coal cars, at the rate of	4	50	"	"
For gondolars, at the rate of	4	50	"	"
For flat cars, at the rate of	3	50	"	"

The court doth further order, adjudge, and decree that the special master hereinafter designated do take and consider all the testimony and exhibits taken before Jacob D. Cox, special master heretofore appointed by the United States circuit court for the district of Indiana, on Dec. 1st, 1884, concerning the amount due to the owners of such cars and locomotives or repairs thereon, and that he report to the court therefrom his conclusions as to the amount which should be allowed for such repairs during the receivership of the said William J. Craig.

The court doth further order, adjudge, and decree that all such rentals and repairs are a prior and paramount lien, to be paid out of the proceeds of the foreclosure sale of the mortgaged premises prior to any distribution of such proceeds among the holders of the bonds secured by said mortgage.

The court doth further order, adjudge, and decree that the claims of the owners of all such cars and locomotives for rental for the use of the same and for repairs for the period of six months prior to the appointment of E. E. Dwight as receiver, namely, August 1, 1883,

be, and the same are hereby, disallowed; and the court doth further order that the claims of the said owners of cars and locomotives for rental for the use of the same and for repairs for the three months covered by the receivership of said E. E. Dwight, to wit, from the 1st day of August to the 1st day of November, 1883, be, and the same are hereby, disallowed.

The court doth further order, adjudge, and decree that the owners of such cars as have been destroyed while in use upon said railway between the said first day of November, 1883, and July 22, 1884, to have and recover the full value thereof at the time of such destruction, to be determined by reference to a master, as hereinafter provided, and that the same is a prior and paramount lien, to be paid out of the proceeds of the foreclosure sale of the mortgaged premises prior to any distribution of such proceeds among the holders of the bonds secured by said mortgage.

The court doth further order, adjudge, and decree that the rentals and repairs due for all the cars and of locomotives in use by the receiver from Nov. 1, 1883, to July 22, 1884 (being the date of the surrender by said receiver of the property in his custody as receiver herein), be apportioned among and paid by the several divisions upon the percentages reported by the said Jacob D. Cox, special master, as set forth in his report, as follows, namely:

Divisions.	Per cent.
Toledo Terminal	.40
Toledo Division	23.79
Dayton Division	12.98
Dayton and Southeastern Division	32.67
Iron Railroad Division	1.98
Cincinnati Northern Division	.36
St. Louis Division	4.16
	22.66

The court doth further order, adjudge, and decree that this cause be, and the same is hereby, referred to William P. Fishback, as special master, to report to the court, in accordance with the provisions hereof, the amount due to each petitioner or owners of cars and locomotives for rentals and repairs, as well as for such cars as have been destroyed while in use by said receiver, and that said master shall report the amount of rental due to David B. Paul, trustee, for the use by said receiver of fifty sets of trucks described in the petition of the said David B. Paul, trustee.

As to all exceptions to the report of Jacob D. Cox, special master, which are inconsistent herewith it is ordered that the same be, and they are hereby, overruled, and in other respects such exceptions are hereby sustained.

From which order and decree the petitioners, R. S. Grant, the Grant Locomotive Works, and the American Loan and Trust Company, trustee; E. B. Phillips, trustee; the American Loan and Trust Co., trustee; the United States Rolling Stock Co.—David B. Paul, trustee; Pennock Brothers; Clark, Post and Martin, and George William Ballou, trustee, respectfully pray, each for himself, an ap-

peal, which is allowed to each respectively upon giving a bond, with sufficient surety, in the penal sum of five hundred dollars.

It is further ordered that the said special master do take proof and report to the court the amounts which should be allowed to the owners of such cars and locomotives as rental for the use of the same by George Hafer, as receiver of the Cincinnati Northern railroad, during such period as they may have been used by him, as well as the value of such cars and locomotives as may have been destroyed while used by said Hafer as such receiver.

JOHN BAXTER, *Judge, &c.*

THE UNITED STATES OF AMERICA, *Western Division of the Southern District of Ohio,* } ss:

I, B. R. Cowen, clerk of the — court of the United States within and for the division and district aforesaid, do hereby certify that the foregoing is truly taken and correctly copied from the journal of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Cincinnati, this 24th day of January, A. D. 1887.

B. R. COWEN, *Clerk,*
By R. C. GEORGI, *Deputy.* [SEAL.]

(Record, p. 371 to p. 404.)

And afterwards, to wit, on the 8th day of February, A. D. 1887, the following intervening petition of R. S. Grant was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Intervening Petition of R. S. Grant.

In the United States Circuit Court, Southern District of Ohio, Western Division.

THE CENTRAL TRUST CO. OF NEW YORK, Complainant, *against* THE TOLEDO, CINCINNATI AND ST. LOUIS RAILROAD CO., The Cincinnati Northern Railroad Co., and Granville D. Braman, Respondents. } #3554, 3576, 3577, 3578, and 3579. In Chancery.

In the matter of the intervening petition of R. S. Grant.

To the honorable the judges of the circuit court of the United States for the southern district of Ohio (western division):

Your petitioner, R. S. Grant, respectfully shows into this honorable court as follows:

1. That on March 24, 1883, your petitioner, R. S. Grant, and the Toledo, Cincinnati and St. Louis Railroad Company entered into a contract for the conditional sale or lease to the said railroad com-

pany of ten locomotives, of the value and agreed price or of aggregate rental $90,558.97, of which $18,558.97 was paid in cash and the remaining $72,000 was payable in monthly installments of from $1,300 to $1,500 each, together with six per cent. interest, taxes, and insurance premiums, the final payment becoming due April 10, 1888, the railroad company, as vendee and lessee, being bound to keep the locomotives fully repaired.

II. That the said locomotives were duly delivered by your petitioner to the said railroad Co., and were used by it in the operation of its railroad up to August 1st, 1883.

The three monthly installments for May, June, and July, 1883, were paid under this contract.

III. That on August 1, 1883, one G. D. Braman, a judgment creditor of the said railroad Co., filed a creditor's bill in the United States circuit court for the district of Illinois, in the seventh circuit, praying, among other things, for the appointment of a receiver of the property of said railroad company, and alleging that the public interests and the interest of all the owners and creditors of the said company would greatly suffer should its line of railroad cease to be operated, and that the same could not be operated without the continued use thereon of the foresaid ten locomotives, which the complainant stated he was informed and believed were likely to be withdrawn if overdue payments thereon were not soon made; that to this bill the Central Trust Co. of New York, complainant herein, as trustee of the mortgage creditors of said railroad, voluntarily entered its appearance, and it acquiesced in the appointment of the receiver thereunder in accordance with the prayer of the bill.

That thereupon Edwin D. Dwight was appointed receiver by the United States circuit courts in the States of Illinois and Indiana of the property of the Toledo, Cincinnati and St. Louis Railroad Company in those States, and on August 2, 1883, under ancillary proceedings in the United States circuit courts in Ohio, the said Dwight was also appointed receiver of all the property of the said railroad Co. in the State of Ohio.

That in the orders appointing the said receiver it was, among other things, provided that the receiver should take possession and operate the said railroad and premises described in said bill of complaint, and should pay all debts for wages, materials, and supplies incurred in the operation and maintainance of the said property during the six months then last past.

That Dwight, as receiver, entered into possession of all the property in the three States named, and thus took possession of the said ten locomotives, the subject of the conditional sales and leases before mentioned, and thereafter used the said locomotives in the operation of the railroad property.

IV. That default was made on August 10, 1883, in the payment of the installment or rental of $1,500 and interest then due under the said contract with your petitioner, R. S. Grant, and thereupon, under the terms of the said contract, your petitioner became entitled to reclaim the locomotives sold or leased by him.

V. That on or about August 18, 1883, demand was made by your

petitioner upon Dwight, as receiver as aforesaid, for the surrender of the said locomotives, but the said Dwight, as receiver, refused to surrender the same, but as such receiver then promised the agent of your petitioner that if the said locomotives were left with him he would purchase and pay for them at a valuation equal to the amount of the installments or rentals remaining unpaid under the said contract.

VI. That on August 25, 1883, your petitioner presented a petition to the United States circuit court in Illinois praying for an order directing Dwight, as receiver, to surrender the said 10 locomotives or for other relief in accordance with the agreement of the said receiver before alleged; that formal action upon this petition was postponed, owing to a conflict of jurisdiction which had arisen between the judges of the 6th and 7th circuit- as to some of the property in the hands of the receiver, but that on or about Sept. 18, 1883, the said Dwight, as receiver, after taking instructions directly from the court which had appointed him, fully ratified and completed the agreement of purchase above alleged, and contracted as such receiver to take the said locomotives and to pay therefor to your petitioner the full contract price, with interest and without discount.

VII. That on October 20, 1883, by an order made in the above-entitled foreclosure suit instituted by the Central Trust Co. of New York against the said railroad Co., the said Dwight was removed as receiver of the property of the railroad company in the State of Ohio, and William J. Craig was made receiver thereof in the place and stead of the said Dwight, and subsequently the said Craig was likewise made receiver of the said property in Illinois and Indiana in the place and stead of the said Dwight, and that it was further ordered in the U. S. circuit court for the district of —— that the receivership already existing under the order theretofore entered in the Braman suit should be extended over and made to apply to the premises and property sought to be foreclosed.

That the said Craig entered into possession of the said property as receiver on November 1, 1883, and thus took possession of the said locomotives and thereafter used the same in the operation of the railroad property.

That the said locomotives had been by the receiver distributed to different divisions of the said railroad with the result that one, #73, was in use upon the Cincinnati Northern railway, and three, #67, 68, and 72, upon the Dayton and Southeastern Division, and the remaining six on the main line of the said Toledo, Cincinnati and St. Louis railway, between Toledo and St. Louis.

VIII. That in October, 1883, your petitioner presented his intervening petition in this cause, praying for a surrender of the locomotives or for other relief, and thereupon a rule was granted directing the receiver to answer, and that an answer was subsequently filed by the receiver, admitting the contract aforesaid, the receiver's possession of the locomotives, and alleging that the same was necessary to the successful operation by him of the said railroad, and praying the court to make such order as would enable him to retain the possession and use of the said locomotives.

IX. That in and by the petition last aforesaid and the answer thereto and the other proceedings in the cause it then appeared that the said railway Co., although it had never paid its bonded interest, had yet been allowed by the mortgage bondholders and their trustees to remain in the possession and management of the railroad property; that the appointment of the said Dwight as receiver, although made at the suit of the said Braman as judgment creditor, was, in fact, a collusive proceeding procured in the interest of the mortgage bondholders and acquiesced in by their trustee; that the said Dwight, as receiver, had taken possession of the petitioner's property in the same interest and notwithstanding the default in the agreements for the conditional sale and lease thereof when demanded by your petitioner upon the ground that his retention thereof was essential and necessary to the operation of the railroad property; that the appointment of the said Craig as receiver in the place and stead of the said Dwight was made upon the motion of the said mortgage trustees and at their suit, and that upon a like demand for the return of your petitioner's locomotives the said Craig refused to surrender the same, for the reason that the same were necessary to the operation of the said railroad; that repeated applications have been made on behalf of your petitioner, both to the receivers and also to the courts appointing the same, for the return of the locomotives or for the payment of the purchase price thereof; that the said receivers had always insisted that the retention of the said locomotives was essential to the operation of the railroad property, and they retained possession and use of said locomotives in the interest of the mortgage bondholders and against the will and demand of your petitioner; that the said receivers never claimed any right to retain the said locomotives, except upon condition of ultimate full payment to your petitioner of their value; that the said receiver Dwight had in terms agreed as receiver to purchase the said locomotives and to pay the full contract price thereof, together with interest and without discount; that the said receiver Craig in his answer aforesaid admitted the facts stated by your petitioner, and prayed the court to make such order as would enable him to retain possession and use of said locomotives and at the same time fully protect the right of your petitioner; that the said Craig, as receiver, afterwards, on Dec. 7, 1883, agreed to the valuation fixed in the contracts and by his counsel consented to the entry of the decrees securing to your petitioner the payment of the same, with interest, and that it had been announced by the judge presiding in this court on Nov. 23, 1883, in open court and in the presence of the solicitor of the mortgage trustees, who made no objection to the same, that your petitioner's locomotives aforesaid should be paid for either by the issue of receiver's certificates or in any speedier way practicable.

X. That on Dec. 22, 1883, decrees were entered herein in the matter of the said intervening petition ordering, adjudging, and decreeing that the receiver pay to your petitioner, as rentals and in full for all claims for rentals, interest, and repairs and for purchase-money due upon the said locomotives # 67, 68, 72, and 73, the ag-

gregate sum of thirty-three thousand and one hundred and sixty-one $\frac{89}{100}$ ($33,161.89) dollars, and apportioning such payments between the separate divisions of the said railroads according to the distribution of the said four locomotives.

Copies of the said decrees are hereto annexed, marked Schedules "E" and "F." The said decrees were entered with the consent of the receiver's solicitors and with the knowledge of the solicitors of The Central Trust Company, complainant in the principal cause.

XI. That the February term of this court for the year 1884 passed without further action herein in the matter of the said intervening petition.

XII. That by orders directed to be entered herein by Judge Baxter of his own motion on the 10th day of April, 1884, in the April term of this court for the year 1884, copies of which orders are hereto annexed, marked Schedule "G," it was directed that the said decrees, Schedules E and F, should be vacated.

That the said order, Schedule G, was based upon a mistake of the facts as presented by the record in this cause; and your petitioner insists that notwithstanding the recitals in the said order, Schedule G, the said decrees, Schedules E and F, were entered after an understanding with and notice, both actual and constructive, to the solicitor of the complainant, the mortgage trustee; and, further, that they were abundantly sustained by the sworn answer of the receiver, by the correspondence of record, and by the uncontradicted facts of the decrees; that they were entered with the written consent and approval of the receiver; that they were in accordance with the contracts and agreements made both with the company and with the receivers under the actual or implied assent of the mortgage bondholders; that they were authorized by the pleadings and correctly recited the facts thereof; that they were presented to the court nearly two weeks prior to their entry, and that the solicitors for the receiver and the complainant, the mortgage trustee, had notice thereof and opportunity to examine and correct the same; that they followed the views which had been expressed by the court in the presence of one of the solicitors for the complainant, the mortgage trustee, without objection upon his part; that after entry they were brought to the notice of all the parties to the cause and remained without objection for more than a reasonable time, and that the said decrees were under the circumstances entirely fair and just to the mortgage bondholders represented by the complainant trustee and to all interested in the cause.

XIII. That your petitioner is advised and believes that the said order, Schedule G, entered herein on the 10th day of April, 1884, purporting to vacate the decrees entered on the 22nd day of Dec., 1883, *were* not only based upon an erroneous view of the facts, but, moreover, *were* beyond the power of the court to make and *were* of no effect and void, and your petitioner has at all times protested against the same.

Not only was the said order, Schedule G, entered by the court of its own motion at the said April term and after the expiration of the October term of 1883, at which the decrees, Schedules E and F,

were entered, *and* also after the intervention and expiration of the February term of this court for the year 1884; that, moreover, the said order, Schedule G, was entered without proof, without change in petition of your petitioner or of the receiver's answer thereto, or without other change in the pleadings in the cause and with the record standing unchanged from its position on Dec. 22, 1883, when the said decrees, Schedules E and F, were entered.

XIV. That by virtue of an order made herein April 5, 1884, it was referred to Hon. Jacob D. Cox, as master, directing him to ascertain the amount of the leased equipment upon the said railroad, the use made of the same, the necessity for its continued use, and what would be a fair and just compensation for the past and future use thereof, and also what, if any, deterioration the said equipment had suffered since it came to the hands of the receiver; that your petitioner, although protesting in writing that the said order and proceedings thereon should not effect his claim herein, did, thus protesting, attend before the said master and make proof as to the use made by the receiver of said ten locomotives and as to their value and condition.

That the said master made a report unto this court as to all the matters referred to him, and therein reported that the said ten locomotives had been used by the said receivers, and that their continued use was necessary in the operation of the property; that the said master further reported that there should be allowed and paid to your petitioner for the said four locomotives the sum of $160 per month rental from the 1st day of August, 1883, and reporting also the rent due for the six months prior to said date at the same rate, with an allowance for damages, and no more, instead of the sum of $33,162.89, which this court had, on December 22, 1883, decreed should be allowed and paid to your petitioner for the said locomotives.

That your petitioner duly protested against any confirmation of the report of the said master, so far as the same affected his claim; but your petitioner is informed and believes that on the 12th day of November, 1885, an order was entered confirming the said report generally, but reducing the monthly rental to $115 per month and disallowing all rentals and repairs prior to Nov. 1, 1883, copy of which order is hereunto annexed, marked Schedule "D;" that your petitioner is, however, advised and believes that the entry of said order was without effect upon your petitioner's claim herein, the same having been adjudicated by the said decrees entered on Dec. 22, 1883, and the said decrees never having been effectively vacated or altered.

XV. That the said four locomotives at all times subsequent to the appointment of the receivers aforesaid and until the sale of the said railway property and its transfer to the purchasers thereof, July 22, 1884, remained in the possession and use of the said receivers and formed an essential part of the equipment employed by the receivers in the operation of the said railroad.

That no sum of money whatever has ever been paid to your petitioner by either the said receivers for such use of the said locomo-

tives or by way of compensation for the deterioration suffered by the said locomotives during such use.

That the said locomotives suffered very serious deterioration in the said use; that the proper and usual repairs were not made to the same, so that the said locomotives were, on said 22 day of July, 1884, by reason of said deterioration and want of repair alone, of very much less value than they were when the return thereof was demanded by your petitioners from the said receivers.

That the market value of locomotives of the class to which the said ten locomotives belong very seriously depreciated since your petitioner demanded from the receivers the return thereof and prior to July 22, 1884, and that your petitioner could not at said last-named date obtain for the said locomotives, had they been in good order, more than thirty per cent. of the sum of money which your petitioner could have obtained therefor had the receivers returned the said locomotives to it upon its demand.

That about July 22, 1884, the said four engines were transferred by the receiver to the "main line," and were by him continued in use thereon with the remaining six locomotives of the aforesaid ten locomotives until May 1, 1885, when the successor of the said receiver discontinued their use, and they were stored on a switch of the said railroad.

XVI. That your petitioner is advised and believes that it is entitled to be paid and allowed the sums so decreed to be paid and allowed to it by the said decrees entered December 22, 1883, and that the same should be ordered paid to your petitioner out of the net income, if any there be, of the receivership, and in default thereof then out of the proceeds of the sale of the *corpus* of the railroad property.

Wherefore your petitioner prays that it may be ordered and decreed that the said decrees entered herein on the 22nd day of Dec., 1883, are still valid and effectual decrees adjudicating finally the said rights of your petitioner herein, and that the orders entered herein on the 10th day of April, 1884, purporting to vacate the said decrees and the orders entered herein on the 5th day of April, 1884, so far as the same can be considered to refer to a master the matters of your petitioner's claim, and any order herein confirming any report of the said master may and each of the same may be ordered and decreed to be without effect upon the rights of your petitioner, and that it be ordered and decreed that your petitioner shall be paid and allowed for its said equipment the sum of $33,161.89, together with interest from the said 22d day of Dec., 1883, to be paid out of the net income of the receivership, if any, so far as the same shall suffice, and that it be further ordered, adjudged, and decreed that any balance of your petitioner's said claim so ascertained not so paid shall be paid out of the proceeds of the sale of the mortgaged property in the principal cause herein, or that such other or further relief may be given your petitioner as to your honors may seem meet in the premises; and your petitioner will ever pray.

R. S. GRANT, *Petitioner.*

BLUFORD WILSON, *Solicitor.*

UNITED STATES OF AMERICA,
Southern District of New York, } ss:

R. S. Grant, being duly sworn, on his oath deposes and says that he is the petitioner above named; that the facts set forth in the foregoing petition, so far as they purport to be stated as of his own knowledge, are true, and so far as they purport to be stated upon information and belief he believes to be true.

R. S. GRANT.

Subscribed and sworn to before me this 5th day of Feb., 1887.
CARSTEN WENDT,
Notary Public in and for Kings County. [SEAL.]

Cert. filed in New York Co.

SCHEDULE D.

THE UNITED STATES OF AMERICA,
Western Division of the Southern District of Ohio, } ss:

At a stated term of the circuit court of the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms, at the city of Cincinnati, O., in said district, on the first Tuesday of October, being also the sixth day of that month, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States of America the one hundred and tenth—present, the Hon. George R. Sage, district judge, and Hon. John Baxter, circuit judge—on Saturday, the 14 day of Nov., 1885, among the proceedings had were the following, to wit:

THE CENTRAL TRUST CO. OF NEW YORK
against
THE TOLEDO, DELPHOS AND BURLINGTON RAILROAD CO. *et al.* } In Chancery. # 3578.

At Cincinnati, in said district, on the 12th day of November, A. D. 1885.

Present: Hon. John Baxter and Hon. Geo. R. Sage, judges.

This cause coming on this day to be heard upon the report of Jacob D. Cox, special master herein, filed June 26th, 1884, and upon the several exceptions of the several parties in interest to the said report, and upon the testimony, exhibits, and proof accompanying the said report, and thereupon the court having heard the arguments of counsel for the respective parties in interest and being now fully advised in the premises—

The court doth order, adjudge, and decree that the various owners of cars and locomotives embraced in the petitions of intervention and in the report of said Jacob D. Cox, special master, do have and recover for the use of their respective cars and locomotives, at the rates hereinafter specified, from the time William J. Craig, as re-

ceiver in this cause, took possession as receiver of the property sold, namely, Nov. 1, 1883, to the 22nd day of July, 1884, at the following rates, namely:

For locomotives, at the rate of	$115 00	per	month.
For passenger cars, at the rate of	36 00	"	"
For baggage, express, and caboose cars, at the rate of	18 00	"	"
For box cars, at the rate of	5 00	"	"
For stock cars, at the rate of	8 00	"	"
For coal cars, at the rate of	4 50	"	"
For gondolas, at the rate of	4 50	"	"
For flat cars, at the rate of	3 50	"	"

The court doth further order, adjudge, and decree that the special master hereinafter designated do take and consider all the testimony and exhibits taken before Jacob D. Cox, special master, and before J. E. Rogers, special master, heretofore appointed by the United States circuit court for the district of Indiana on Dec. 1, 1884, concerning the amount due to the owners of such cars and locomotives for repairs thereon, and that he report to the court therefrom his conclusions as to the amount which should be allowed for such repairs during the receivership of the said William J. Craig.

The court doth further order, adjudge, and decree that all such rentals and repairs are a prior and paramount lien, to be paid out of the proceeds of the foreclosure sale of the mortgaged premises prior to any distribution of such proceeds among the holders of the bonds secured by said mortgage.

The court doth further order, adjudge, and decree that the claims of the owners of all such cars and locomotives for rental for the use of the same and for repairs for the period of six months prior to the appointment of E. E. Dwight as receiver, namely, August 1, 1883, be, and the same are hereby, disallowed; and the court doth further order that the claims of the said owners of cars and locomotives for rental for the use of the same and for repairs for the three months covered by the receivership of said E. E. Dwight, to wit, from the 1st day of August to the 1st day of November, 1883, be, and the same are hereby, disallowed.

The court doth further order, adjudge, and decree that the owners of such cars as have been destroyed while in use upon said railway between the said first day of Nov., 1883, and July 22, 1884, *to* have and recover the full value thereof at the time of such destruction, to be determined by reference to a master, as hereinafter provided, and that the same is a prior and paramount lien, to be paid out of the proceeds of the foreclosure sale of the mortgaged premises prior to any distribution of such proceeds among the holders of the bonds secured by said mortgage.

The court doth further order, adjudge, and decree that the rentals and repairs due for all the cars and of locomotives in use by the receiver from November 1, 1883, to July 22, 1884 (being the date — the surrender by said receiver of the property in his custody as receiver herein), be apportioned among and paid by the several divis-

ions upon the percentage reported by the said Jacob D. Cox, special master, as set forth in his report, as follows, namely:

Divisions.	Per cent.
Toledo Terminal	.40
Toledo Division	23.79
Dayton Division	12.98
Dayton ond Southeastern Division	32.67
Iron Railroad Division	1.98
Cincinnati Division	1.36
Cincinnati Northern Division	4.16
St. Louis Division	22.66

The court doth further order, adjudge, and decree that this cause be, and the same is hereby, referred to William P. Fishback, as special master, to report to the court, in accordance with the provisions hereof, the amount due to each petitioner or owners of cars and locomotives for rentals and repairs as well as for such cars as have been destroyed while in use by said receiver, and that said master shall report the amount of rental due to David B. Paul, trustee, for the use by said receiver of fifty sets of trucks described in the petition of the said David B. Paul, trustee.

As to all exceptions to the report of Jacob D. Cox, special master, which are inconsistent herewith it is ordered that the same be, and they are hereby, overruled, and in other respects such exceptions are hereby sustained.

From which order and decree the petitioners, R. S. Grant, The Grant Locomotive Works, and The American Loan and Trust Company, trustee; E. B. Phillips, trustee; The American Loan and Trust Company, trustee; The United States Rolling Stock Company—David B. Paul, trustee; Pennock Bros.; Clark, Post and Martin, and George William Ballou, trustee, respectfully pray, each for himself, an appeal, which is allowed to each, respectively, upon giving a bond, with sufficient surety, in the penal sum of five hundred dollars.

It is further ordered that the said special master do take proof and report to the court the amounts which should be allowed to the owners of such cars and locomotives as rental for the use of the same by George Hafer, as receiver of the Cincinnati Northern railroad, during such period as they may have been used by him, as well as the value of such cars and locomotives as may have been destroyed while used by said Hafer as such receiver.

JOHN BAXTER, *Judge, &c.*

THE UNITED STATES OF AMERICA,
Western Division of the Southern District of Ohio, } *ss:*

I, B. R. Cowen, clerk of the circuit court of the United States within and for the division and district aforesaid, do hereby certify that the foregoing — is truly taken and correctly copied from the journal of said court.

In testimony whereof I have hereunto set my hand and affixed

the seal of said court, at the city of Cincinnati, O., this 24th day of Jan., A. D. 1887.

B. R. COWEN, *Clerk*,
[SEAL.] By R. C. GEORGI, *Deputy*.

SCHEDULE E.

THE UNITED STATES OF AMERICA, } ss:
Western Division of the Southern District of Ohio, }

At a stated term of the circuit court of the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms, at the city of Cincinnati, O., in said district, on the first Tuesday of Oct., being also the second day of that month, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States of America the one hundred and seventh—present, the Hon. George R. Sage, district judge—on Saturday, the 22 day of Dec., 1883, among the proceedings had were the following, to wit:

THE CENTRAL TRUST CO. OF NEW YORK
against
THE TOLEDO, CINCINNATI AND ST. LOUIS RAILROAD Co *et al.* (Dayton and Southeastern Division) *et al.* } In Chancery. # 3554.

In the matter of the intervening petition of R. S. Grant.

The said cause came on to be heard upon the petition and answer of the receiver thereto and upon the evidence submitted on behalf of said petitioner.

And it appearing to the satisfaction of the court that the receiver has in his possession Grant locomotives # 67, 68, and 72, with their tenders, and is using the same in the operation of the said Southeastern Division of the said defendant company's railroad between Dayton and Wellston, Ohio, and that the said locomotives are three of the ten covered by the said agreement of lease set out in said petition, and were acquired by said railway company under the terms of said agreement, and were so held at the date of the appointment of the receiver herein;

And it further appearing that the present receiver or his predecessor took the said locomotives into his possession as such receiver on the first day of August last and has had the same in continuous use and possession since that date without having made any of the payments of rentals, as provided in said indenture of lease, or other compensation for the use thereof;

And it further appearing that the said locomotives are, in the judgment of the receiver, necessary to the proper operation of the said railway and should be acquired as part of its permanent equipment, and that the value of said locomotives and tenders as fixed in said indenture of lease is reasonable, and that the petitioner, R. S. Grant, the owner of said locomotives and tenders, is willing, upon

the receipt of the contract price or upon being adequately secured therein, to transfer the title of the same to the receiver;

And the matter being fully heard by the court, and upon due deliberation thereon, it is ordered, adjudged, and decreed that the receiver pay to the said petitioner as rental for said locomotives and in full for all claims for rentals, interest, and repairs down to the first day of December, 1883, the sum of $2,311.41, the same being the amount due to said date under the terms of said lease, and the further sum of $22,560, balance in full as purchase-money for said locomotives and tenders.

And it is further ordered that the receiver pay said several amounts as part of the operating expenses of the said Southeastern Div. out of any money not appropriated for the payment of current labor, supplies, and taxes.

And it is further ordered and decreed that the said several amounts, with interest thereon, at the rate of six per cent., from the first day of December, 1883, shall be a charge upon the earnings, income, and all the property of the said Toledo, Cincinnati and St. Louis Railway Company, and especially of the said division, prior to the first mortgage or other bonded debt of said railroad or said division thereof, and any balance of said several amounts remaining unpaid at the date of the foreclosure and sale of said railroad or said division shall be a first lien thereon and the said sale shall be made subject thereto.

UNITED STATES OF AMERICA,
Western Division of the Southern District of Ohio, } *ss:*

I, B. R. Cowen, clerk of the circuit court of the United States within and for the division and district aforesaid, do hereby certify that the foregoing entry is truly taken and correctly copied from the journal of said court.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at the city of Cincinnati, O., this 22 day of Jan'y, A. D. 1887.

B. R. COWEN, *Clerk,*
By R. C. GEORGI, *Deputy.*

SCHEDULE F.

THE UNITED STATES OF AMERICA,
Western Division of the Southern District of Ohio, } *ss:*

At a stated term of the circuit court of the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms, at the city of Cincinnati, on the first Tuesday of October, being also the second of that month, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States of America the one hundred and seventh—present, the Hon. Geo. R. Sage, district judge—on Saturday, the 22 day of Dec., 1883, among the proceedings had were the following, to wit:

THE CENTRAL TRUST COMPANY OF NEW YORK *against* THE TOLEDO, CINCINNATI AND ST. LOUIS R. R. Co., The Cincinnati Northern R. R. Co., *et al.*	In Chancery. # 3554.

In the matter of the intervening petition of R. S. Grant.

The said cause came on to be heard upon the petition and the answer of the receiver thereto and upon the evidence submitted on behalf of said petitioner.

And it appearing to the satisfaction of the court that the receiver has in his possession Grant locomotive # 73, and is using the same in the operation of the said Cincinnati Northern Railway Co. between Cincinnati and Dayton, Ohio, and that the said locomotive is one of the ten covered by the agreement of lease set out in said petition, and was acquired by said railway company under the terms of said agreement and was so held at the date of the appointment of the receiver herein;

And it further appearing that the present receiver or his predecessor took the said locomotive, with its tender, into his possession as such receiver on the first day of August last, and has had the same in continuous use and possession since that date without having made any of the monthly payments of rental, as provided in said indenture of lease, or other compensation for the use thereof;

And it further appearing that the said locomotives is, in the judgment of the receiver, necessary to the proper operation of said railway and should be acquired as part of its permanent equipment, and that the value of said locomotive as fixed in said agreement of lease is reasonable, and that the petitioner, R. S. Grant, the owner of said locomotive and tender, is willing, upon the receipt of the contract price or upon being adequately secured therein, to transfer the title of the same to the receiver;

And the matter being fully heard by the court, and upon due deliberation thereon, it is hereby ordered, adjudged, and decreed that the receiver pay to the said petitioner, as rental for said locomotive and tender and in full for all claims for rental, interest, and repairs down to the first day of December, 1883, the sum of $770.48, the same being the amount due to said date under the terms of said lease.

And the further sum of $7,520, balance in full as purchase-money for said locomotive and tender.

And it is further ordered that the receiver pay said several amounts as part of the operating expenses of the said railway out of any money not appropriated for the payment of current labor, supplies, and taxes.

And it is further ordered and decreed that the said several amounts, with interest thereon at the rate of six per cent. from the 1st day of Dec., 1883, shall be a charge upon the earnings, income, and all the property of the said Toledo, Cincinnati and St. Louis Rail-

road Co., and especially of the said Cincinnati Northern Railway Co., as ahead of the first-mortgage or other bonded debt of said company or either of them, and any balance of said several amounts remaining unpaid at the date of the foreclosure and sale of the said railways shall be a first lien —, and the said sale shall be made subject thereto.

THE UNITED STATES OF AMERICA,
Western Division of the Southern District of Ohio, } *ss:*

I, B. R. Cowen, clerk of the circuit court of the United States within and for the division and district aforesaid, do hereby certify that the foregoing entry is truly taken and correctly copied from the journal of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Cincinnati, O., this 22nd day of January, A. D. 1887.

B. R. COWEN, *Clerk,*
[SEAL.] By R. C. GEORGI, *Deputy.*

SCHEDULE G.

THE UNITED STATES OF AMERICA,
Western Division of the Southern District of Ohio, } *ss:*

At a stated term of the circuit court of the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms, at the city of Cincinnati, on the first Tuesday of April, being also the first of that month, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and eighth—present, the Hon. Geo. R. Sage, district judge, and Hon. John Baxter, circuit judge—on Tuesday, the 10th day of April, 1884, among the proceedings had were the following, to wit:

THE CENTRAL TRUST COMPANY OF NEW YORK
against
THE TOLEDO, CINCINNATI AND ST. LOUIS R. R. Co.,
THE CINCINNATI NORTHERN R'Y Co., *et al.* } In Chancery.

This day this cause came on further to be heard upon the intervening petition of R. Suydam Grant, filed in this cause October 27, 1883, and the court, being fully advised in the premises, does order, adjudge, and decree as follows, to wit:

The court finds that the two decrees herein made and entered upon said intervening petition on the 22nd day of Dec., A. D. 1883, were entered without notice to the complainant herein and without proof; that the said decrees are erroneous and unjust to the bondholders for whom said complainant is trustee; that said decrees are not authorized by the pleadings, and are based upon a misrecital of the facts, as evidenced by the record of this cause; that said decrees were

authorized by the court without examination in the erroneous belief entertained at the time that all the parties in interest had assented to said decrees, and that the parties adversely interested acquired no knowledge of the allowance of said decrees until about the 24th day of February, A. D. 1884, and after the adjournment of the term of court at which the same were entered.

And thereupon it is by the court, of its own motion, ordered, adjudged, and decreed that the said decrees be, and they are hereby, annulled, set aside, and held for naught.

And the court, coming now to determine the question arising upon the said intervening petition of R. Suydam Grant, does order, adjudge, and decree as follows, to wit:

That the relief prayed for in the said intervening petition be, and it is hereby, denied except as hereinafter provided.

And the court does further find that the said petitioner is entitled to fair compensation for the use of said rolling stock described in his said intervening petition by the receiver of this cause upon the railroad of The Cincinnati Northern Railway Company, defendant herein, and for any deterioration by reason of such use.

But the court defers the determination of the amount of such compensation until the coming in of the report thereon of the master appointed in this cause on the 5th day of April, A. D. 1884.

And the court does further find that the said petitioner is entitled to take and repossess himself of his said rolling stock whenever the same may be found in the possession of the receiver appointed in this cause or of the receiver appointed in causes # 3576, 3577, 3578, and 3579 in this court.

And leave is hereby granted to said petitioner to apply at any time to this court for any additional orders that may be necessary in that behalf.

And the said R. Suydam Grant applied for leave to answer the petition of the complainant, The Central Trust Co., filed March 15, 1884, and to support his answer by affidavits — proposed are, by force of the foregoing decree, rendered unnecessary, declined to grant the leave asked and refused to permit and answer to said petition for rehearing on affidavits or other proof in support thereof to be filed, and thereupon the intervening petitioner, R. Suydam Grant, in open court prayed and appealed from the foregoing decree, which is disallowed by the court.

THE UNITED STATES OF AMERICA,
Western Division of the Southern District of Ohio, } *ss:*

I, B. R. Cowen, clerk of the circuit court of the United States within and for the division and district aforesaid, do hereby certify that the foregoing entry is truly taken and correctly copied from the journal of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Cincinnati, O., this 22nd day of January, A. D. 1887.

B. R. COWEN, *Clerk,*
By R. C. GEORGI, *Deputy.*

[SEAL.]

(Record, pp. 407 & 408, incl.)

And afterwards, to wit, on the 5th day of April, A. D. 1887, the following demurrer was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Demurrer.

In the Circuit Court of the United States, Southern District of Ohio, Western Division.

THE CENTRAL TRUST CO. OF N. Y.
vs.
THE T., D. & B. R. R. Co., THE T., C. & ST. L. R. R. Co., *et al.* } #3578, 3577, 3576, 3579.

The purchasers of the Dayton and Southeastern, the Dayton, and the Cincinnati Northern Divisions of the Toledo, Cincinnati and St. Louis Railroad Company, by protestation, not confession all or any of the matters and things in the intervening petition of R. S. Grant contained to be true in such manner and form as the same *is* therein set forth, doth demur to said petition, and for cause of — showeth that said petitioner has not made or stated such a case as entitled him in a court of equity to any relief, and for further cause of demurrer show that the said petition doth not contain any matter of equity whereon this court can give the petitioner any relief against the purchasers herein.

Wherefore, and for divers other good causes of demurrer appearing in the said petition, the purchasers doth demur thereto, and humbly demands the judgment of this court whether they shall be compelled to make any further or other answer to said petition.

C. W. FAIRBANKS,
Solicitor for D. & S. E., Dayton, & Cin. Nor. Div's.

I, C. W. Fairbanks, do hereby certify that the above demurrer is well taken in point of law.

C. W. FAIRBANKS.

UNITED STATES OF AMERICA, }
District of Ohio, West. Div. }

C. W. Fairbanks, being first duly sworn, on oath says that the above demurrer is not interposed for delay.

C. W. FAIRBANKS.

Subscribed and sworn to before me this 5th day of April, 1887.

ROB'T C. GEORGI,
Dep. Cl'k U. S. Circuit Court, S. D. O. [SEAL.]

(Record, p. 419 to p. 426, incl.)

And afterwards, to wit, on the 28th day of April, 1887, the following answer was filed in the clerk's office of said court in the words and figures as follows, to wit:

In the Circuit Court of the United States, Southern District of Ohio, Western Division.

THE CENTRAL TRUST CO. OF NEW YORK, Complainant, *vs.* THE TOLEDO, DELPHOS AND BURLINGTON Railroad Co., The Toledo, Cincinnati and St. Louis Railroad Company, and Others.	# 3554, 3576, 3577, 3578, 3579.

Answer of the Central Trust Co. to the Petition of the Grant Locomotive Works.

The Central Trust Company of New York to the petition of the Grant Locomotive Works, filed on the 8th day of February, 1887, says:

First. That it did not acquiesce in the appointment of Edwin E. Dwight as receiver in the suit of Grenville —— against The Toledo, Cincinnati and St. Louis Railroad Company, said appointment being made in August, 1883.

Second. That it has no knowledge or information as to whether the said Dwight, as such receiver, took possession of the said ten locomotives and used the same in the operation of the railroad property, and therefore denies that he did, as such receiver, take possession of said locomotives or used them as such receiver in the operation of said railroad.

Third. That it is not true that said receiver promised the petitioner that if said locomotives were left with him he would purchase and pay for them at a valuation equal to the amount of the installments or rentals remaining unpaid under said contract, and that if said receiver did make said promise he had no authority whatever to make the same, and said promise, if made by said receiver, was and is null and void and of no effect.

Fourth. It says it is not true that said Dwight ratified and completed the agreement of purchase of said locomotives, or that he contracted as a receiver to take said locomotives and to pay therefor to the petitioner the full contract price, with interest and without discount; but it says if said receiver did so ratify or complete said agreement or did contract as such receiver to take said locomotives and pay therefor the full contract price said act of said receiver was without authority and is and was null and void.

Fifth. It says it has no knowledge that said receiver, William J. Craig, distributed said locomotives to the different divisions of said railroad with the result that some were in use upon the Cincinnati Northern railway and some upon the Dayton and Southeastern Division, and denies the same.

Sixth. That it is not true that said mortgage bondholders and their trustees permitted said railway company to remain in the possession and management of the railroad property, and it is not true that the appointment of said Dwight as receiver was a collusive

proceeding in the interest of the mortgage bondholders; that it is not true that said Craig was appointed receiver in the place and stead of said Dwight; on the contrary, the Central Trust Co. says that said Craig was appointed receiver of the respective roads consolidated into the Toledo, Cincinnati and St. Louis Railroad Company in separate actions begun by the Central Trust Company as trustee under the mortgage securing first bonds on said respective roads, and that said Dwight was appointed receiver of the consolidated company in an action begun by a judgment creditor against it.

The said Central Trust Co. says it has no knowledge, information, or belief that the said receivers always insisted that the retention of said locomotives *was* essential to the operation of said railroad, and that they retained possession and use of said locomotive- in the interest of the mortgage bondholders and against the will and demand of the petitioner, and says that the same is not true, and that it is not true that the said Craig, as receiver, agreed to the valuation of said locomotives fixed in the contract, but it says if he did so it was without authority.

And the said Central Trust Co. further says that if the judge presiding in this court on November 23, 1883, announced in open court and in the presence of the solicitor of the mortgage trustees that the locomotives in question should be paid for by issue of receiver's certificates or in any speedier way practicable, said solicitor was and is unconcious thereof, and said Central Trust Co. denies that said announcement was so made.

The Central Trust Company further states that the decrees of Dec. 22, 1883, were entered without its knowledge or consent and under a misapprehension on the part of the court, and that it is not true that said decrees were entered with the knowledge of the solicitors of The Central Trust Company, complainant in said case, and it says it is not true that there is any correspondence or any record or any facts sustaining the claim made in the petition herein that said decrees were entered after an understanding with or upon notice to the Central Trust Co. or its solicitors; and the Central Trust Co. says that neither it nor its solicitors had any notice that said decrees or either of them had been entered until on or about the 24th of February, A. D. 1884.

And the Central Trust Co. further says that speedily thereafter it filed in this court a petition for the rehearing of said decree, and upon said rehearing the circuit judge set the same aside after argument and due consideration, and at the same time gave said petitioner the right to take possession of and remove said locomotives, and to proceed against the receiver for the value of the use of said locomotives, and for compensation for the deterioriation in the value of the same by reason thereof.

HOADLEY, JOHNSON AND COLSTON,
Solicitors for the Central Trust Co.

UNITED STATES OF AMERICA,
Southern Dist. of Ohio, Hamilton County, } ss:

Edward Colston, being by me first duly sworn, says that he is one of the attorneys for the Central Trust Co. of New York, a corporation, and that the facts stated in the foregoing answer are true except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes them to be true.

EDWARD COLSTON.

Sworn to before me and subscribed in my presence this 28th Apr., A. D. 1887.

JOHN FLACK WINSLOW,
[SEAL.] *Notary Public, Hamilton Co., O.*

And afterwards, to wit, on the 28th day of April, 1887, the following answer was filed in the clerk's office of said court in words and figures as follows, to wit:

United States Circuit Court, Southern District of Ohio, Western Division.

THE CENTRAL TRUST CO. OF NEW YORK, Complainant,
vs.
THE TOLEDO, DELPHOS AND BURLINGTON Railroad Co., The Toledo, Cincinnati and St. Louis Railroad Company, and Others. } # 3554, 3576, 3577, 3578, 3579.

Answer of the Central Trust Co. of N. Y. to the Petition of R. S. Grant.

The Central Trust Company of New York to the petition of R. S. Grant, filed on the 8th day of February, 1887, says:

First. That it did not acquiesce in the appointment of Edwin E. Dwight as receiver in the suit of Grenville —— against The Toledo, Cincinnati and St. Louis Railroad Company, said appointment being made in August, 1883.

Second. That it has no knowledge or information as to whether the said Dwight as such receiver took possession of the said ten locomotives and used the same in the operation of the railroad property, and therefore denies that he did as such receiver take possession of said locomotives or used them as such receiver in the operation of said railroad.

Third. That it is not true that said receiver promised the petitioner that if said locomotives were left with him he would purchase and pay for them at a valuation equal to the amount of the installments or rentals remaining unpaid under said contract, and that if said receiver did make said promise he had no authority whatever to make the same, and said promise, if made by said receiver, was and is null and void and of no effect.

Fourth. It says it is not true that said Dwight ratified and completed the agreement of purchase of said locomotives, or that he contracted as a receiver to take said locomotives and to pay therefor to the petitioner the full contract price, with interest and without discount; but it says if said receiver did so ratify or complete said agreement or did contract as such receiver to take said locomotives and pay therefor the full contract price said act of said receiver was without authority and is and was null and void.

Fifth. It says it has no knowledge that said receiver, William J. Craig, distributed said locomotives to the different divisions of said railroad, with the result that some were in use upon the Cincinnati Northern railway and some upon the Dayton and Southeastern Division, and denies the same.

Sixth. That it is not true that said mortgage bondholders and their trustees permitted said railway company to remain in the possession and management of the railroad property, and it is not true that the appointment of said Dwight as receiver was a collusive proceeding in the interest of the mortgage bondholders; that it is not true that said Craig was appointed receiver in the place and stead of said Dwight; on the contrary, the Central Trust Co. says that said Craig was appointed receiver of the respective roads consolidated into the Toledo, Cincinnati and St. Louis Railroad Company in separate actions begun by the Central Trust Company as trustee under the mortgage securing first bonds on said respective roads, and that said Dwight was appointed receiver of the consolidated company in an action begun by a judgment creditor against it.

The said Central Trust Co. says it has no knowledge, information, or belief that the said receivers always insisted that the retention of said locomotives was essential to the operation of said railroad, and that they retained possession and use of said locomotives in the interest of the mortgage bondholders and against the will and demand of the petitioner, and says that the same is not true, and that it is not true that the said Craig, as receiver, agreed to the valuation of said locomotives fixed in the contract, but it says if he did so it was without authority.

And the said Central Trust Co. further says that if the judge presiding in this court on November 23, 1883, announced in open court and in the presence of the solicitor of the mortgage trustees that the locomotives in question should be paid for by issue of receiver's certificates or in any speedier way practicable said solicitor was and is unconscious thereof, and said Central Trust Co. denies that said announcement was so made.

The Central Trust Company further states that the decrees of Dec. 22, 1883, were entered without its knowledge or consent and under a misapprehension on the part of the court, and that it is not true that said decrees were entered with the knowledge of the solicitors of the Central Trust Company, complainant in said case, and it says it is not true that there is any correspondence or any record or any facts sustaining the claim made in the petition herein that said decrees were entered after an understanding with or upon

notice to the Central Trust Co. or its solicitors; and the Central Trust Co. says that neither it nor its solicitors had any notice that said decrees or either of them had been entered until on or about the 24th of February, A. D. 1884.

And the Central Trust Co. further says that speedily thereafter it filed in this court a petition for the rehearing of said decree, and upon said rehearing the circuit judge set the same aside after argument and due consideration, and at the same time gave said petitioner the right to take possession of and remove said locomotives and to proceed against the receiver for the value of the use of said locomotives and for a compensation for the deterioration in the value of the same by reason thereof.

HOADLEY, JOHNSON AND COLSTON,
Solicitors for the Central Trust Co.

UNITED STATES OF AMERICA,
Southern Dist. of Ohio, Hamilton County, } ss:

Edward Colston, being by me first duly sworn, says that he is one of the attorneys for the Central Trust Co. of New York, a corporation, and that the facts stated in the foregoing answer are true except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes them to be true.

EDWARD COLSTON.

Sworn to before me and subscribed in my presence this 28 Apr., A. D. 1887.

JOHN FLACK WINSLOW,
Notary Public, Hamilton Co., O. [SEAL.]

(Record, p. 438.)

And afterwards, to wit, on the 11th day of June, A. D. 1887, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal X, p. 332.

This cause this day was heard upon the petition of R. S. Grant and of the Grant Locomotive Works, respectively, herein filed February 8th, A. D. 1887, asking that certain orders hereinbefore made, to wit, on the 10th day of April, A. D. 1884, asking the court to set aside and hold for naught certain other orders heretofore made herein on December 22, 1883, directing that the receiver pay said petitioners, as rental for certain locomotives and as balance of purchase-money therefor, certain sums specified in said orders, and making the same a lien upon certain property described in said orders made upon the joint intervening petition of the Grant Locomotive Works and the American Loan and Trust Co., filed in this cause October 27, 1883, and was argued by counsel; and the court being fully advised in the premises, it is ordered, adjudged, and decreed that said orders of April 10, 1884, setting aside said order of December 22, 1883, be, and

the same hereby are, set aside and held for naught, and that said order of Dec. 22, 1883, be, and the same hereby is, restored.

And thereupon came the complainant, The Central Trust Co., and prayed an appeal to the Supreme Court of the United States from this decree setting aside said order made April, 1884, and restoring said orders of Dec. 22, 1883; which appeal is allowed upon complainant giving bond for costs in the sum of $500.00, to be approved by the clerk of this court.

(Record, p. 439 to p. 457, incl.)

And afterwards, to wit, on the 28th day of January, A. D. 1889, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal Y, page 178.

In the matter of the intervening petition of the Grant Locomotive Works and the American Loan and Trust Co.

This cause coming on to be further heard on the motion of said intervening petitioners, by their counsel, B. H. Bristow and Bluford Wilson, to require the purchasers of the railroad property heretofore sold under decree of foreclosure and sale in this case to forthwith pay into the registry of this court, for the use of the said intervenors, the amount due under the decree entered herein; that in default thereof the said railroad property be resold for the benefit of the intervenors;

And the said intervenors being present, by their counsel, and the purchasers of the Dayton and of the Cincinnati Divisions being present, by C. W. Fairbanks, their solicitor, and the Dayton, Fort Wayne and Chicago Railroad Company, assignee of the purchasers of the Southeastern Division and of the purchasers of the Iron railroad, by John C. Coombs, its solicitor, and R. D. Marshall, the present receiver of the said railroad company, and the purchasers of the main line, the Toledo Terminal, and the St. Louis Division being present, by Clarence Brown, their solicitor, objecting to the jurisdiction of the court, and the complainant, The Central Trust Co. of New York, opposing said motion of the said intervenors, being represented by Edward Colston, its solicitor;

And thereupon, pending the hearing upon the said motion, comes the complainant, The Central Trust Co. of New York, on the 15th day of March, 1884, — be now heard as a petition for a rehearing of the said decrees of December 22, 1883; or, if that relief be denied, that the same be taken and held to be a bill of review or a bill in the nature of a bill of review; or, if that relief be denied, that the said petition be amended and supplemented in certain respects as stated in a certain paper now read, and be now docketed as an original bill of review as of the 15th day of March, 1884; and after hearing Edward Colston, the counsel for said complainant, in support of the said motion and B. H. Bristow and Bluford Wilson, of counsel for the said intervening petitioners, in opposition thereto,

it is ordered that the said application of the complainant and each part thereof be, and the same is, denied in all respects.

To which ruling and order of the court the said complainant duly excepts.

And thereupon, and still pending the hearing upon the motion first before stated, comes the Dayton, Fort Wayne and Chicago Railroad Co., by John C. Coombs, its counsel, and R. D. Marshall, its present receiver, the said railroad company claiming to be the assignee of the purchasers of the Southeastern Division, which railroad was sold under the decree of foreclosure and sale herein, and prays leave to be permitted to intervene herein and be heard herein in review upon the matters of the original orders or decrees entered herein on December 22, 1883, and as set forth in a petition in writing therefor, which it moved the court for leave to file herein; and, after hearing the counsel for said Dayton, Fort Wayne and Chicago Railroad Company in support of said motion and B. H. Bristow and Bluford Wilson, of counsel for said intervening petitioners, in opposition thereto, it is ordered that the application of the said Dayton, Fort Wayne and Chicago Railroad Company for leave to intervene and to file said petition herein be, and the same is, in all respects denied.

To which ruling and order of the court the said Dayton, Fort Wayne and Chicago Railroad Company and its receiver duly except.

And thereupon, the court having fully heard the argument of counsel of the respective parties hereto upon the said motion of said intervening petitioners, The Grant Locomotive Works and The American Loan and Trust Co., as first above stated, and having fully deliberated thereon, and the court considering that the order entered herein on the 10th day of April, 1884, was void, and that it had been for that reason set aside and ordered to be held for naught by the order entered herein on June 11th, 1887, and that all the orders or decrees entered herein in pursuance of or in execution of the said order of April 10, 1884, were equally void and of no effect so far as the same purports to effect the rights of the said intervenors, and that the decrees entered herein on December 22, 1883, are now in full force and effect as to the locomotives hereinafter mentioned;

And the court further considering that under the said decrees of Dec. 22, 1883, and under said decree of foreclosure and sale herein and the notice of sale given in pursuance of such decree, and under the sale actually made thereunder and the order of this court confirming the said sale, the purchasers of the mortgage division of said Toledo, Cincinnati and St. Louis R. R. sold in this case took the said railway and property subject to the payment of the sum of $99,282.70, with interest thereon from the 1st day of December, 1883, adjudged by the said decree of Dec. 22, 1883, in respect thereto to be due to the intervenor, The Grant Loco. Works, on account of locomotives #57 to 62 and 64 to 66, inclusive, and by the said decrees ordered to be paid by W. J. Craig, the receiver, in the manner set forth in said decree of Dec. 22, 1883, to the said intervenor, and also adjudged by the said decree to be a first lien upon the Toledo, Cincin-

nati and St. Louis railroad, and especially upon the Southeastern Division thereof;

And the court further considering that the said lien adjudged by the said decree of Dec. 22, 1883, in favor of the said intervenor, The Grant Locomotive Works, against the said railroads should be enforced, and also that there should now be enforced the right reserved by this court upon the sale of the Southeastern Division of the said Toledo, Cincinnati and St. Louis railroad to resell the premises and property so sold in this case, upon failure to comply within twenty days with any order of this court directing the purchasers thereof to make such further payment in this case as this court should from time to time direct in order to meet claims adjudged in this case by this court to be prior in equity to the mortgages foreclosed in this case;

And the said intervenors admitting it had already received upon account for the said locomotives # 57 to 62 and 64 to 66, inclusive, but without prejudice to its rights in the premises, the following sums of Money, viz:

The sum of twenty-six thousand seven hundred and sixty-two dollars and twenty-eight cents, paid between August, 1884, and April, 1887, upon account of rentals of the said locomotives and the amounts of thirty-six hundred dollars, paid June 3, 1887, upon the sale of locomotives Nos. 60 and 61 to Post, Martin and Co., and that after crediting the amounts so admitted to have been paid and adjusting the interest and expenses accounts up to the 12th day of November, 1888, said expense being $516.01, amount paid by said intervenor for car- and repairs of said locomotives from Sept. 30, 1884, to Sept. 21, 1888, the net amount remaining due and unpaid to the said intervenor on account of the said locomotive- # 56 to 62 and 64 to 66, inclusive, on the 12th day of November, 1888, is the sum of ninety-four thousand and twenty-six dollars and forty-eight cents and no more, and no one claiming that any other or greater credit should be made upon the said claim:

Thereupon the court orders as follows:

It is now ordered that the purchasers of the Southeastern Division of the said Toledo, Cincinnati and St. Louis railroad, as being primarily chargeable therewith as between themselves and the said intervenor under the said decree of Dec. 22, 1883, be and they are required to pay or cause to be paid into the registry of this court within sixty days from the 28th day of January, 1889, for the use of the said intervenor, The Grant Locomotive Works, the amount of ninety-four thousand and twenty-six $\frac{48}{100}$ dollars ($94,026.28), with interest thereon from the 12th day of November, 1888.

And it is further ordered that, in default of making of the said payment within the time so limited therefor, the said Southeastern Division be resold, upon request of the said intervenor herein, The Grant Locomotive Works, for the payment and satisfaction out of the proceeds thereof of the said sum of $94,026.48, with interest herein, directed to be paid to the said intervenor by the said purchasers.

And it is further ordered that this decree is without prejudice to

any rights the said intervenors may have to apply for orders to resell other mortgage- divisions of the Toledo, Cincinnati and St. Louis railroad for the payment out of the proceeds of such resale any balance of the amount hereinbefore named, to wit, said sum of $94,026.48, not realized upon any sale of the Southeastern Division.

And it is further ordered that in case any resale of the railroad and property hereinbefore described in this case becomes necessary by reason of default in the payment of said amount hereby ordered to be paid, then such resale shall be made pursuant to the terms of the original decrees for the foreclosure and sale of the said railroads respectively, but by the marshall of this district, who is hereby appointed master commissioner for that purpose, and that leave is given to apply to this court for further directions as to any such sale.

And it is further ordered that this order is and shall be without prejudice to the right of the said Southeastern Division and the purchasers thereof or any other persons or corporation succeeding to or having their rights in the premises to apply to this and other courts having jurisdiction in the several cases in foreclosure proceedings against the several divisions of the said Toledo, Cincinnati and St. Louis railroad for contribution towards the said amount from said several divisions or the said purchases thereof, or, in the event of the payment of the same by said purchasers of said Southeastern Division, to apply for a distribution thereof over and among said other divisions according to the percentage of contribution and distribution applicable thereto, as herein and in said other causes of foreclosure has been or may be determined, or to collect or enforce the payment of said sum by the said Toledo, Cincinnati and St. Louis Railroad Company or out of and against any property thereof, all as the rights not now passed upon but expressly reserved as to such contribution of the said parties, purchasers of said respective mortgage divisions, and said Toledo, Cincinnati and St. Louis Railroad Company as between each other shall appear and as this court and any other court having jurisdiction in or touching the premises heretofore may have determined or shall order, adjudge, and decree.

And thereupon the said Central Trust Company of New York prays an appeal to the Supreme Court of the United States from the orders and decrees so made, and the said Central Trust Company also prays an appeal to the Supreme Court of the United States from the said rulings hereinbefore mentioned to which it excepted as aforesaid, which exceptions are allowed; and this court allows both of the appeals so prayed upon the said appellants filing a bond herein, with sufficient security to be approved by this court, in the sum of ten thousand dollars, which appeal shall, during the pendency and until the determination thereof, supercede this decree and all enforcements thereof by or on behalf of the said intervenors, and in like manner from the rulings hereinbefore set forth to which the Dayton, Fort Wayne and Chicago Railroad Company excepted as aforesaid, which exceptions are also allowed. The Dayton, Fort Wayne and Chicago Railroad Company also prays a like appeal from the orders and decrees so made, except from so much thereof

as provides that the same is without prejudice to any contribution which may be found to be just and proper; as to any payments made by any of the purchasers under the provisions of the said order or realized under any resale made under this order, allows the same, the said appellants filing herein a bond for costs in the sum of five hundred dollars, with sufficient security to be approved by this court.

And afterwards, to wit, on the 28th day of January, A. D. 1889, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal Y, page 182.

In the matter of the intervening petition of the Grant Locomotive Works and the American Loan and Trust Company.

This cause coming on to be further heard on the motion of said intervening petitioners, by their counsel, B. H. Bristow and Bluford Wilson, to require the purchasers of the railroad property heretofore sold under decree of foreclosure and sale in this case to forthwith pay into the registry of this court, for the use of the said intervenors, the amount due under the said decree entered herein; that in default thereof the said railroad property be resold for the benefit of the intervenors;

And the said intervenors being present by their counsel, and the purchasers of the Dayton and of the Cincinnati Divisions being represented by C. W. Fairbanks, their solicitor, and the Dayton, Fort Wayne and Chicago Railroad Company, assignee of the purchasers of the Southeastern Division and of the purchasers of the Iron railroad, by John C. Coombs, its solicitor, and R. D. Marshall, the present receiver of the said railroad company, and the purchasers of the main line, the Toledo Terminal, and the St. Louis Division being present by Clarence Brown, their solicitor, objecting to the jurisdiction of the court, and the complainant, The Central Trust Co. of New York, opposing said motion of the said intervenors, being represented by Edward Colston, its solicitor;

And thereupon, pending the hearing upon the said motion, comes the complainant, The Central Trust Co. of New York, on the 15th day of March, 1884, — be now heard as a petition for a rehearing of the said decrees of December 22nd, 1883; or, if that relief be denied, that the same be taken and held to be a bill of review or a bill in the nature of a bill of review; or, if that relief be denied, that the said petition be amended and supplemented in certain respects, as stated in a certain paper now read, and be now docketed as an original bill of review as of the 15th day of March, 1884; and, after hearing Edward Colston, the counsel for said complainant, in support of the said motion and B. H. Bristow and Bluford Wilson, of counsel for the said intervening petitioners, in opposition thereto, it is ordered that the said application of the complainant and each part thereof be, and the same is, denied in all respects.

To which ruling and order of the court the said complainant duly excepts.

And thereupon, and still pending the hearing upon the motion first before stated, comes the Dayton, Fort Wayne and Chicago Railroad Co., by John C. Coombs, its counsel, and R. D. Marshall, its present receiver, the said railroad company claiming to be the assignee of the purchasers of the Southeastern Division, which railroad was sold under the decree of foreclosure and sale herein, and prays leave to be permitted to intervene herein and be heard herein in review upon the matters of the original orders or decrees entered herein on December 22, 1883, and as set forth in a petition in writing therefor, which it moved the court for leave to file herein; and, after hearing the counsel for said Dayton, Fort Wayne and Chicago Railroad Company in support of said motion and B. H. Bristow and Bluford Wilson, of counsel for said intervening petitioners, in opposition thereto, it is ordered that the application of the said Dayton, Fort Wayne and Chicago Railroad Company for leave to intervene and to file said petition herein be, and the same is, in all respects denied.

To which ruling and order of the court the said Dayton, Fort Wayne and Chicago Railroad Company and its receiver duly except.

And thereupon, the court having fully heard the argument of counsel of the respective parties hereto upon the said motion of said intervening petitioners, The Grant Locomotive Works and The American Loan and Trust Company, as first above stated, and having fully deliberated thereon, and the court considering that the order entered herein on the 10th day of April, 1884, was void, and that it had been for that reason set aside and ordered to be held for naught by the order entered herein on June 11th, 1887, and that all the orders or decrees entered herein in pursuance of or in execution of the said order of April 10, 1884, were equally void and of no effect so far as the same purports to effect the rights of the said intervenors, and that the decrees entered herein on December 22, 1883, are now in full force and effect as to the locomotives hereinafter mentioned;

And the court further considering that under the said decrees of Dec. 22, 1883, and under said decree of foreclosure and sale herein and the notice of sale given in pursuance of such decree, and under the sale actually made thereunder and the order of this court confirming the said sale, the purchasers of the mortgage division of said Toledo, Cincinnati and St. Louis R. R. sold in this case took the said railway and property subject to the payment of the sum of $11,031.30, with interest thereon from the 1st day of December, 1883, adjudged by the said decree of Dec. 22, 1883, in respect thereto to be due to the intervenor, The Grant Loco. Works, on account of locomotives # 63, and by the said decrees ordered to be paid by W. J. Craig, the receiver, in the manner set forth in said decree of Dec. 22, 1883, to the said intervenor, and also adjudged by the said decree to be a first lien upon the Cincinnati Northern Division of the Toledo, Cincinnati and St. Louis railroad;

And the court further considering that the said lien adjudged by

the said decree of Dec. 22, 1883, in favor of the said intervenor, The Grant Locomotive Works, against the said railroads should be enforced, and also that there should now be enforced the right reserved by this court upon the sale of the Cincinnati Northern Division of the said Toledo, Cincinnati and St. Louis railroad to resell the premises and property so sold in this case upon failure to comply within twenty days with any order of this court directing the purchasers thereof to make such further payment in this case as this court should from time to time direct in order to meet claims adjudged in this case by this court to be prior in equity to the mortgages foreclosed in this case;

And the said intervenors admitting it had already received upon account for the said locomotives #63, but without prejudice to his rights in the premises, the following sums of money, viz:

The sum of $3,420.64, paid between August, 1884, and March, 1887, upon account of rentals, and the sum of $1,850, paid Sept. 30, 1887, upon the sale of locomotive #63 to the Oregon Improvement Company, and that after crediting the amounts so admitted to have been paid and adjusting the interest and expenses accounts up to the 12th day of November, 1888, the net amount remaining due and unpaid to the said intervenor on account of the said locomotive # — on the 12th day of November, 1888, is the sum of $8,418.67, and no more, and no one claiming that any other or greater credit should be made upon the said claim:

Thereupon the court orders as follows:

It is now ordered that the purchasers of the Cincinnati Northern Division of the said Toledo, Cincinnati & St. Louis railroad, as being primarily chargeable therewith as between themselves and the said intervenor under the said decree of Dec. 22, 1883, be and they are required to pay or cause to be paid into the registry of this court, within sixty days from the 28th of January, 1889, for the use of the said intervenor, The Grant Locomotive Works, the amount of $8,418.67, with interest thereon from the 12th day of November, 1888.

And it is further ordered that in default of making of the said payment within the time so limited therefor the said Cincinnati Northern Division be resold upon request of the said intervenor herein, the said Grant Locomotive Works, for the payment and satisfaction out of the proceeds thereof of the said sum of $8,418.67, with interest, herein directed to be paid to the said intervenor by the said purchasers.

And it is further ordered that this decree is without prejudice to any right the said intervenors may have to apply for orders to resell other mortgage-divisions of the Toledo, Cincinnati and St. Louis railroad for the payment out of the proceeds of such resale any balance of the amount hereinbefore named, to wit, said sum of $8,418.67, not realized upon any sale of the Cincinnati Northern Division.

And it is further ordered that in case any resale of the railroad and property hereinbefore described in this case becomes necessary by reason of default in the payment of said amount hereby ordered to be paid, then such resale shall be made pursuant to the terms of

the original decrees for the foreclosure and sale of the said railroads respectively, but by the marshal of this district, who is hereby appointed master commissioner for that purpose, and that leave is given to apply to this court for further directions as to any such sale.

And it is further ordered that this order is and shall be without prejudice to the right of the said Cin'ti Northern Division and the purchasers thereof or any other persons or corporation to apply to this and other courts having jurisdiction in the several cases in foreclosure proceedings against the several divisions of the said Toledo, Cincinnati and St. Louis railroad for contribution towards the said amount from said several divisions or the said purchase-s thereof, or in the event of the payment of the same by said purchasers of said Cincinnati Northern Division to apply for a distribution thereof over and among said other divisions according to the percentage of contribution and distribution applicable thereto, as herein and in said other causes of foreclosure has been or may be determined, or to collect or enforce the payment of said sum by the said Toledo, Cincinnati & St. Louis Railroad Company or out of and against any property thereof, all as the rights not now passed upon but expressly reserved as to such contribution of the said parties, purchasers of said respective mortgage divisions, and said Toledo, Cincinnati and St. Louis Railroad Company, as between each other, shall appear and as this court and any other court having jurisdiction in or touching the premises heretofore may have determined or shall order, adjudge, and decree.

And thereupon the said Central Trust Company of New York prays an appeal to the Supreme Court of the United States from the orders and decrees so made, and the said Central Trust Company also prays an appeal to the Supreme Court of the United States from the said rulings hereinbefore mentioned, to which it excepted as aforesaid, which exceptions are allowed, and this court allows both of the appeals so prayed upon the said appellants filing a bond herein, with sufficient security, to be approved by this court, in the sum of five thousand dollars, which appeal shall, during the pendency and until the determination thereof, supersede this decree and all enforcements thereof by or on behalf of the said intervenors.

And in like manner from the rulings hereinbefore set forth to which the Dayton, Fort Wayne and Chicago Railroad Company excepted as aforesaid, which exceptions are also allowed, the Dayton, Fort Wayne and Chicago Railroad Company also prays a like appeal from the orders and decrees so made, except from so much thereof as provides that the same is without prejudice to any contribution which may be found to be just and proper as to any payment made by any of the purchasers under the provisions of the said order or realized under any resale made under this order, and this court allows the same, the said appellants filing herein a bond for costs in the sum of five hundred dollars, with sufficient security, to be approved by this court.

And afterwards, to wit, on the 29th day of January, A. D. 1889,

an entry was made upon the journal of said court clothed in the words and figures following, to wit:

Journal Y, p. 199.

Now comes the Central Trust Co., and having presented to the court its two bills of exceptions taken in this case on the hearing of the motions filed November 3rd, 1888, for resale of the railroad known as the Southeastern Division of the Toledo, Cincinnati and St. Louis railroad heretofore sold under foreclosure proceedings in this case, such resale being to satisfy the amounts claimed to be due under decree of December 22, 1888, for certain locomotives therein mentioned, and at the same time came also the Dayton, Fort Wayne and Chicago Railroad Company and likewise presented its two bills of exceptions taken on the hearing of said motions, and the court finding said bills of exceptions of said Central Trust Company and said Dayton, Fort Wayne and Chicago Railroad Co. to be true, and the same having been signed, sealed, and allowed, it is now ordered that they be, and they are hereby, made part of the record in this case.

(Record, p. 458.)

And afterwards, to wit, on the 30th day of January, A. D. 1889, the following bill of exceptions was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Bill of Exceptions.

Circuit Court of the United States, Southern District of Ohio, Western Division.

THE CENTRAL TRUST COMPANY OF NEW YORK *vs.* THE TOLEDO, DELPHOS AND BURLINGTON RAILroad Company, The Toledo, Cincinnati and St. Louis Railroad Company, and Granville D. Braman, Defendants.	In Equity. #—.

Be it remembered that on the 12th day of November, A. D. 1888, at the October term, A. D. 1888, of the above-named court, this cause came on to be heard on the motion of the Grant Locomotive Works in words and figures as follows: "Now, on this day, come the intervening petitioner, R. S. Grant, by B. H. Bristow and Bluford Wilson, *its* solicitors, and referring to the several judgment decrees of this court in favor of the said intervenor entered in the above-entitled cause on the 22nd day of December, 1883, and the decree of June 11th, 1887, relating thereto, thereupon moves the court for an order directing the purchasers of the said railroad property primarily liable for the several amounts of said judgment decrees to forthwith pay into the registry of this court for the use of the said intervenor the amount due under said decrees respectively with interest according to the terms thereof, and in default thereo

that said railroad property may be resold under the decrees of this court for the benefit of the intervenors and for other and further relief."

And thereupon the Central Trust Company, by its counsel, prayed the court that those certain proceedings filed in this cause by it March 15, 1884, entitled "petition for rehearing," &c., be amended and supplemented, and as amended and supplemented be docketed as an original bill of review as of that date, which original proceeding entitled "petition for rehearing," &c., and the same as proposed to be amended and supplemented and docketed as original bill of review as of said date, is hereto attached and marked "Exhibit A" and made part hereof.

Upon consideration whereof the court refused to allow said petition for rehearing to be amended or supplemented as above prayed and docketed as an original bill of review of date March 15, 1884; to which ruling of the court the Central Trust Company, by its counsel, then and there excepted, and presented to the court this its bill of exceptions taken in that behalf, containing all the evidence heard in said application, and prayed that the same be signed, sealed, and allowed and made part of the record of this cause, which is accordingly done this 28th day of January, A. D. 1889.

HOWELL E JACKSON, [SEAL.]
Circuit Judge.